TITLE 15—COMMERCE AND TRADE

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54.	Automotive Propulsion Research and Development [New]	2701
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CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

Ex. Ord. No. 12022. National Commission for the Review of Antitrust Laws and Procedures

Ex. Ord. No. 12022, Dec. 1, 1977, 42 F.R. 61441, as amended by Ex. Ord. No. 12052, Apr. 7, 1978, 43 F.R. 15133, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is hereby established the National Commission for the Review of Antitrust Laws and Procedures, hereafter referred to as the Commission.

(b) The Commission shall consist of twenty-two members to be appointed by the President and shall include:

(1) The Assistant Attorney General in charge of the Antitrust Division of the Department of Justice.

(2) The Chairman of the Federal Trade Commission.

(3) The Chairman of one other appropriate independent regulatory agency.

(4) Five members of the Senate recommended by the President of the Senate.

(5) Five members of the House of Representatives recommended by the Speaker of the House of Representatives.

(6) One judge of a United States District Court.

(7) One State Attorney General.

(8) Seven persons from the private sector.

(c) The President shall designate a Chairman or Co-chairmen from among the members of the Commission.

Sec. 2. *Functions of the Commission.* (a) The Commission shall, within the framework of existing antitrust laws (as that term is defined in 15 U.S.C. 12), study and make recommendations on the following subjects:

(1) Revision of procedural and substantive rules of law needed to expedite the resolution of complex antitrust cases and development of proposals for making the remedies available in such cases more effective, including:

(i) creation of a roster of district court judges knowledgeable regarding antitrust law and large-case problems to whom such cases may be assigned;

(ii) revision of pleading requirements in order to narrow as quickly and precisely as possible the scope of contested issues of fact and law;

(iii) revision of discovery practices in order to limit expensive and time-consuming inquiry into areas not germane to contested issues;

(iv) the desirability of a grant of judicial authority to restrict and penalize dilatory practices through control of issue formulation and imposition of sanctions for unnecessary delays or failures to cooperate;

(v) amendment of evidentiary practices to expedite introduction of testimony and exhibits at trial;

(vi) simplification of the standards required to establish attempted monopolization in suits brought by the United States under Section 2 of the Sherman Act [15 U.S.C. 2];

(vii) consideration of structural relief for antitrust violations, and of nonjudicial alternatives for resolution of complex antitrust issues; and

(2) the desirability of retaining the various exemptions and immunities from the antitrust laws, including exemptions for regulated industries and exemptions created by State laws that inhibit competition.

(b) The Commission shall conclude its work not later than six months from the date the last member is appointed and shall submit a final report to the President and the Attorney General within thirty days thereafter. The Commission shall terminate thirty days after submitting its final report.

Sec. 3. *Administrative Matters.* (a) The Commission may request any Federal agency to furnish it with such information, advice, and services as may be useful for carrying out its functions under this Order.

(b) The Department of Justice shall furnish to the Commission a staff director and any necessary staff, supplies, facilities and other administrative services. Such funds as are necessary for ordinary operations of the Commission, to the extent permitted by law, shall be provided from the appropriations available to the Department of Justice.

(c) The Commission may procure, subject to the availability of funds, the temporary professional services of individuals to assist in its work, in accordance with the provisions of Section 3109 of Title 5 of the United States Code.

(d) Members of the Commission shall receive no compensation from the United States by virtue of their service on the Commission but shall be entitled to receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

(e) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.), except that of reporting annually to the Congress, which are applicable to the Commission shall be performed by the Attorney General in accordance with guidelines and procedures established by the Office of Management and Budget.

Jimmy Carter.

Antitrust Acts and Laws Defined in Other Sections

Antitrust acts and laws are defined in sections 12, 44, 1311, 3301 of this title; title 10 section 7430; title 12 sections 1828, 1849; title 16 section 2602; title 28 section 1407; title 30 section 184; title 33 section 1502; title 40 section 488; title 42 sections 5417, 5909, 6202;

title 43 sections 1331, 1770; title 45 section 791; title 49 sections 1384, 10706; title 50 App. sections 1941a, 2158.

§ 1. Trusts, etc., in restraint of trade illegal; penalty

SHERMAN ACT REFERRED TO IN OTHER SECTIONS

The Sherman Act [15 U.S.C. 1 to 7] is referred to in sections 12, 15c, 15d, 28, 29, 30, 31, 62, 1012, 1013, 3301 of this title; title 7 section 225; title 8 section 1251; title 10 section 7430; title 12 sections 1828, 1849; title 16 section 2602; title 26 section 311; title 30 section 184; title 33 section 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202; title 43 sections 970, 1331, 1770; title 45 section 791; title 46 section 814; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 2. Monopolizing trade a felony; penalty

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18a of this title; title 12 section 1849.

§ 8. Trusts in restraint of trade illegal; penalty

WILSON TARIFF ACT REFERRED TO IN OTHER SECTIONS

The Wilson Tariff Act [15 U.S.C. 8 to 11] is referred to in section 31 of this title; title 7 section 225; title 16 section 2602; title 43 section 1331; title 42 section 2135; title 46 section 814; title 49 section 10706.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9, 11, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 section 184; title 33 section 1502; title 40 section 488; title 42 sections 5417, 5909, 6202; title 43 section 1770; title 45 section 791; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 9. Jurisdiction of courts; duty of United States attorneys; procedure

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 section 184; title 33 sections 1331, 1502; title 40 section 488; title 42 sections 5417, 5909, 6202; title 43 section 1770; title 45 section 791; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 12. Words defined; short title

CLAYTON ACT REFERRED TO IN OTHER SECTIONS

The Clayton Act [see References in Text note to this section] is referred to in sections 1012, 1013, 3301 of this title; title 7 section 225; title 10 section 7430; title 12 sections 1828, 1849; title 16 section 2602; title 26 section 311; title 30 section 184; title 33 sections 1331, 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202; title 43 section 1770; title 45 section 791; title 49 section 10706; title 50 App. sections 1941a, 2158.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1291, 1311 of this title; title 19 section 2033; title 46 section 885; title 49 sections 1301, 1384, 10706.

§ 13. Discrimination in price, services, or facilities

SHORT TITLE

Act June 19, 1936, which amended this section and added sections 13a, 13b, and 21a of this title, is popularly known as the Robinson-Patman Anti-Discrimination Act and also as the Robinson-Patman Price Discrimination Act.

ROBINSON-PATMAN ANTI-DISCRIMINATION ACT REFERRED TO IN OTHER SECTIONS

The Robinson-Patman Anti-Discrimination Act [15 U.S.C. 13 to 13b, 21a] is referred to in sections 13b, 13c, 21a, 1013, 3301 of this title; title 16 section 2602; title 42 sections 5909, 6202; title 43 section 1331; title 45 section 791; title 49 section 10706; title 50 App. section 2158.

§ 16. Judgments

(a) Prima facie evidence

A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws or by the United States under section 15a of this title, as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken or to judgments or decrees entered in actions under section 15a of this title.

[See main edition for text of (b) to (i)]

CODIFICATION

Subsec. (a) is set out in this supplement to correct typographical error in the main edition.

§ 18. Acquisition by one corporation of stock of another

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

TERMINATION OF CIVIL AERONAUTICS BOARD

All functions, powers, and duties of the Civil Aeronautics Board were terminated by Pub. L. 95-504, § 40(a), Oct. 24, 1978, 92 Stat. 1744, effective Jan. 1, 1985. See section 1551(a)(4) of Title 49, Transportation.

§ 19. Interlocking directorates and officers

CODIFICATION

The Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, referred to in text, known as the Interstate Commerce Act, was classified to chapters 1 (§ 1 et seq.) 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 26 of this title; title 12 section 3205.

§ 21. Enforcement provisions

CODIFICATION

The Interstate Commerce Act, as amended, referred to in subsec. (a), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

§ 26. Injunctive relief for private parties; exception; costs

CODIFICATION

The Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, referred to in text, known as the Interstate Commerce Act, was classified to chapters 1 (§ 1 et seq.) 8 (§ 301 et. seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

CHAPTER 2—FEDERAL TRADE COMMISSION; PROMOTION OF EXPORT TRADE AND PREVENTION OF UNFAIR METHODS OF COMPETITION

SUBCHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 18a, 64, 65, 68, 68a, 68c, 68d, 68e, 68f, 68g, 69, 69a, 69d, 69f, 69g, 69h, 70a, 70c, 70d, 70e, 70f, 70g, 70h, 636, 638, 640, 1012, 1013, 1192, 1194, 1291, 1460, 1607, 1681a, 1691c, 1692*l*, 1693*o* 1802, 2006, 2079, 2101, 2103, 2106, 2311, 2821, 2823, 3301 of this title; title 10 section 7430; title 16 section 2602; title 19 section 2485; title 21 section 378; title 30 section 184; title 33 section 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202, 6294, 6315, 6325; title 43 sections 1331, 1770; title 45 section 791; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 42. Employees; expenses

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 44. Definitions

CODIFICATION

The Act to regulate commerce, approved February 14, 1887, referred to in text, means the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-eight, known as the Interstate Commerce Act, which was classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49, Transportation. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

§ 45. Unfair methods of competition unlawful; prevention by Commission

SECTION REFERRED TO IN OTHER SECTIONS

This section is is referred to in sections 1, 18a, 52, 53, 56, 57a, 57b, 1456, 1681s, 2006, 2310, 2823 of this title; title 7 section 193; title 21 sections 347b, 378; title 39 section 3009; title 42 section 6303.

§ 49. Documentary evidence; depositions; witnesses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 756 of this title; title 7 sections 222, 610, 2046, 2146; title 21 sections 467d, 677, 1051; title 26 section 5274; title 27 section 202; title 29 sections 177, 209, 308, 521, 835, 1134; title 33 section 944; title 42 section 7255; title 50 App. section 1983.

§ 57a. Unfair or deceptive acts or practices rulemaking proceedings

STUDY, EVALUATION AND REPORT BY FEDERAL TRADE COMMISSION AND ADMINISTRATIVE CONFERENCE OF UNITED STATES ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES RULEMAKING PROCEDURES

Section 202(d) of Pub. L. 93–637, as amended by Pub. L. 94–299, § 2, May 29, 1976, 90 Stat. 588; Pub. L. 95–558, Nov. 1, 1978, 92 Stat. 2130, provided that: "The Federal Trade Commission and the Administrative Conference of the United States shall each conduct a study and evaluation of the rulemaking procedures under section 18 of the Federal Trade Commission Act [this section] and each shall submit a report of its study (including any legislative recommendations) to the Congress not later than June 30, 1979."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 2006, 2309, 2823 of this title.

CHAPTER 2A—SECURITIES AND TRUST INDENTURES

SUBCHAPTER I—DOMESTIC SECURITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 77ccc, 77ddd, 77fff, 77ggg, 77hhh, 77vvv, 77www, 77zzz, 78m, 78o, 78o–3, 78s, 78u, 78*lll*, 79p, 79t, 79u, 80a–2, 80a–8, 80a–9, 80a–14, 80a–24, 80a–34, 80a–37, 80a–49, 80b–2, 80b–3 of this title; title 11 section 205; title 11 App. section 101; title 25 section 646; title 43 section 1625; title 45 sections 830, 854; title 49 sections 11301, 11367.

§ 77b. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77ccc, 77ddd of this title; title 11 sections 664, 793, 918; title 11 App. section 1145; title 12 section 1451; title 29 section 1002.

§ 77c. Classes of securities under this subchapter

(a) Exempted securities

Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:

[See main edition for text of (1) to (5)]

(6) Any security issued by a motor carrier the issuance of which is subject to the provisions of section 11302 of title 49, or any interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;

(7) Certificates issued by a receiver or by a trustee or debtor in possession in a case under title 11, with the approval of the court;

[See main edition for text of (8)]

(9) Except with respect to a security exchanged in a case under title 11, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Except with respect to a security exchanged in a case under title 11, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

[See main edition for text of (11)]

(b) Additional exemptions

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds $2,000,000.

[See main edition for text of (c)]

(As amended May 21, 1978, Pub. L. 95-283, § 18, 92 Stat. 275; Oct. 6, 1978, Pub. L. 95-425, § 2, 92 Stat. 962; Nov. 6, 1978, Pub. L. 95-598, title III, § 306, 92 Stat. 2674.)

CODIFICATION

In subsec. (a)(6), "section 11302 of title 49" was substituted for "section 314 of title 49" on authority of section 3(b) of Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49, Transportation.

AMENDMENTS

1978—Subsec. (a)(7). Pub. L. 95-598, § 306(a), substituted "or debtor in possession in a case under title 11" for "in bankruptcy".

Subsec. (a)(9), (10). Pub. L. 95-598, § 306(b), substituted "Except with respect to a security exchanged in a case under title 11, any" for "Any".

Subsec. (b). Pub. L. 95-425 substituted "$2,000,000" for "$1,500,000".

Pub. L. 95-283 substituted "$1,500,000" for "$500,000".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(7), (9), and (10) effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77*l*, 77q, 77ddd, 80a-24 of this title; title 11 section 205; title 11 App. section 101; title 12 sections 1425b, 2290; title 22 sections 283h, 285h, 286k-1; title 25 section 646; title 49 section 11367.

§ 77d. Exempted transactions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-24 of this title; title 11 section 205.

§ 77e. Prohibitions relating to interstate commerce and the mails

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77b to 77d, 77j, 77*l*, 77ddd, 80a-24 of this title; title 11 sections 664, 793, 918; title 11 App. sections 364, 1129, 1145; title 45 section 791; title 49 section 11367.

SUBCHAPTER III—TRUST INDENTURES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 78u, 80a-2, 80a-37, 80a-49, 80b-2 of this title; title 11 App. section 364, 1145; title 25 section 646.

§ 77 ccc. Definitions

When used in this subchapter, unless the context otherwise requires—

[See main edition for text of (1) to (17)]

(18) The term "Bankruptcy Act" means the Bankruptcy Act or title 11.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 307, 92 Stat. 2674.)

AMENDMENTS

1978—Par. (18). Pub. L. 95-598 substituted "Bankruptcy Act or title 11" for "Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, as amended, whether amended prior to or after August 3, 1939".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 2B—SECURITIES EXCHANGES

Sec.
78dd-1. Foreign corrupt practices by issuers [New].
(a) Prohibited practices.
(b) Definition.
78dd-2. Foreign corrupt practices by domestic concerns [New].
(a) Prohibited practices.
(b) Penalties.
(c) Civil action by Attorney General to prevent violations.
(d) Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 77ccc, 77hhh, 77www, 77zzz, 78bbb, 79p, 79t, 79u, 80a-2, 80a-8, 80a-9, 80a-12, 80a-17, 80a-34, 80a-37, 80a-49, 80b-2, 80b-3, 80b-8, 78eee, 1691c, 1693o of this title; title 11 App. section 741; title 25 section 646; title 26 section 277; title 29 section 432; title 31 section 1052; title 43 section 1625; title 49 section 11301.

§ 78a. Short title

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-213, title I, § 101, Dec. 19, 1977, 91 Stat. 1494, provided that: "This title [enacting sections 78dd-1 and 78dd-2 of this title and amending sections 78m and 78ff of this title] may be cited as the 'Foreign Corrupt Practices Act of 1977'."

Pub. L. 95-213, title II, § 201, Dec. 19, 1977, 91 Stat. 1498, provided that: "This title [amending sections 78m and 78o of this title] may be cited as the 'Domestic and Foreign Investment Improved Disclosure Act of 1977'."

ACT REFERRED TO IN OTHER SECTIONS

The Foreign Corrupt Practices Act of 1977 [see Short Title note of 1977 Amendment above] is referred to in section 2197 of Title 22, Foreign Relations and Intercourse.

§ 78c. Definitions and application

(a) Definitions

When used in this chapter, unless the context otherwise requires—

[See main edition for text of (1) to (39)]

(40) The term "financial responsibility rules" means the rules and regulations of the Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices which are designated by the Commission, by rule or regulation, to be financial responsibility rules.

[See main edition for text of (b) to (d)]

(As amended May 21, 1978, Pub. L. 95-283, § 16, 92 Stat. 274.)

AMENDMENTS

1978—Subsec. (a)(40). Pub. L. 95-283 added subsec. (a)(40).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78m, 78o-4, 78q, 78w, 78y, 78ccc, 78fff-2, 80b-2, 80b-4 of this title; title 2 section 702; title 7 section 6c; title 12 section 2290; title 22 sections 283h, 285h, 286k-1; title 25 section 646; title 26 section 7609; title 28 App. section 302.

§ 78d-1. Delegation of functions by Commission

[See main edition for text of (a)]

(b) Right of review; procedure

With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the commission, individual Commissioner, administrative law judge, employee, or employee board, upon its own initiative or upon petition of a party to or intervenor in such action, within such time and in such manner as the Commission, by rule, shall prescribe: *Provided, however,* That the vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review: *And provided further,* That a person or party shall be entitled to review by the Commission if he or it is adversely affected by action at a delegated level which (1) denies any request for action pursuant to section 77h(a) or section 77h(c) of this title or the first sentence of section 78*l*(d) of this title; (2) suspends trading in a security pursuant to section 78*l*(k) of this title; or (3) is pursuant to any provision of this chapter in a case of adjudication, as defined in section 551 of title 5, not required by this chapter to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a)(1) through (6) of title 5).

(c) Finality of delegated action

Should the right to exercise such review by declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

(As amended Pub. L. 95-251, § 2(a)(4), Mar. 27, 1978, 92 Stat. 183.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-251 substituted "administrative law judge" for "hearing examiner".

Subsec. (c). Pub. L. 95-251 substituted "administrative law judge" for "hearing examiner".

§ 78k. Trading by members of exchanges, brokers, and dealers

(a) Trading for own account or account of associated person; exceptions

[See main edition for text of (1) and (2)]

(3) The provisions of paragraph (1) of this subsection insofar as they apply to transactions on a national securities exchange effected by a member thereof who was a member on February 1, 1978 shall not become effective until February 1, 1979. Nothing in this paragraph shall be construed to impair or limit the authority of the Commission to regulate or prohibit such transactions prior to February 1, 1979, pursuant to paragraph (2) of this subsection.

[*See main edition for text of* (b) *to* (d)]

(As amended May 21, 1978, Pub. L. 95-283, § 18(a), 92 Stat. 275.)

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-283 substituted "February 1, 1978" for "May 1, 1975", and "February 1, 1979" for "May 1, 1978" in two places.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 18(b) of Pub. L. 95-283 provided that: "The amendment made by subsection (a) of this section [amending subsec. (a)(3) of this section] shall be effective as of May 1, 1978."

§ 78*l*. Registration requirements for securities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78d-1, 78k-1, 78*l*-1, 78m, 78n, 78o, 78p, 78q-1, 78dd-1, 78hh, 78hh-1 of this title; title 12 section 3305; title 16 section 824c; title 26 section 409A.

§ 78m. Periodical and other reports

[*See main edition for text of* (a)]

(b) Form of report; books, records, and internal accounting; directives

(1) The Commission may prescribe, in regard to reports made pursuant to this chapter, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earning statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

(2) Every issuer which has a class of securities registered pursuant to section 78*l* of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

[*See main edition for text of* (c)]

(d) Reports by persons acquiring more than five per centum of certain classes of securities

(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 78*l* of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 78*l*(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations, prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) the background, and identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases have been or are to be effected;

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 78c(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the background, identity, residence, and citizenship of each such associate; and

(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

[*See main edition for text of* (2) *to* (6); (e) *and* (f)]

(g) Statement of equity security ownership

(1) Any person who is directly or indirectly the beneficial owner of more than 5 per centum of any security of a class described in subsection (d)(1) of this section shall send to the issuer of the security and shall file with the Commission a statement setting forth, in such form and at such time as the Commission may, by rule, prescribe—

(A) such person's identity, residence, and citizenship; and

(B) the number and description of the shares in which such person has an interest and the nature of such interest.

(2) If any material change occurs in the facts set forth in the statement sent to the issuer and filed with the Commission, an amendment shall be transmitted to the issuer and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate in the public interest or for the protection of investors (A) to achieve centralized reporting of information regarding ownership, (B) to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report, and (C) to tabulate and promptly make available the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State agencies and the public.

(6) The Commission may, by rule or order, exempt, in whole or in part, any person or class of persons from any or all of the reporting requirements of this subsection as it deems necessary or appropriate in the public interest or for the protection of investors.

(h) Report to Congress

The Commission shall report to the Congress within thirty months of December 19, 1977, with respect to (1) the effectiveness of the ownership reporting requirements contained in this chapter, and (2) the desirability and the feasibility of reducing or otherwise modifying the 5 per centum threshold used in subsections (d)(1) and (g)(1) of this section, giving appropriate consideration to—

(A) the incidence of avoidance of reporting by beneficial owners using multiple holders of record;

(B) the cost of compliance to persons required to report;

(C) the cost to issuers and others of processing and disseminating the reported information;

(D) the effect of such action on the securities markets, including the system for the clearance and settlement of securities transactions;

(E) the benefits to investors and to the public;

(F) any bona fide interests of individuals in the privacy of their financial affairs;

(G) the extent to which such reported information gives or would give any person an undue advantage in connection with activities subject to subsection (d) of this section and section 78n(d) of this title;

(H) the need for such information in connection with the administration and enforcement of this chapter; and

(I) such other matters as the Commission may deem relevant, including the information obtained pursuant to subsection (f) of this section.

(As amended Dec. 19, 1977, Pub. L. 95-213, title I, § 102, title II, §§ 202, 203, 91 Stat. 1494, 1498, 1499.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1), (h), was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-213, § 102, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (d)(1). Pub. L. 95-213, § 202, added references to the residence and citizenship of persons and to the nature of the beneficial ownership of persons in subpar. (A), and added references to background, identity, residence, and citizenship of associates of persons in subpar. (D).

Subsecs. (g), (h). Pub. L. 95-213, § 203, added subsecs. (g) and (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77nnn, 78*l*, 78n, 78o, 78w, 78hh, 80a-8, 80a-29, 773 of this title; title 11 App. section 1145; title 16 section 824c; title 22 section 2197.

§ 78n. Proxies

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78*l*, 78hh of this title; title 11 section 205; title 49 section 11367.

§ 78o. Registration and regulation of brokers and dealers

[*See main edition for text of* (a) *to* (c)]

(d) Filing of supplementary and periodic information

Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to August 20, 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 78m of this title in respect of a security registered pursuant to section 78*l* of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 78*l* of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class to which the registration statement relates are held of record by less than three hundred persons. For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

[*See main edition for text of* (e)]

(As amended Dec. 19, 1977, Pub. L. 95-213, title II, § 204, 91 Stat. 1500.)

CODIFICATION

Section 7(d) of Pub. L. 91-598, cited in the credit to this section in the main edition, was redesignated as section 11(d) by Pub. L. 95-283, § 9, May 21, 1978, 92 Stat. 260.

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-213 authorized the Commission to define, for purposes of this subsection, the term "held of record".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77nnn, 78c, 78*l*, 78m, 78o-1, 78o-2, 78o-4, 78r, 78s, 78u, 78y, 78cc, 78dd-1, 78ff, 78hh, 78hh-1, 78ccc, 78ddd, 78fff-4, 78*lll*, 80a-8, 80a-22, 80a-29, 80a-35, 773 of this title.

§ 78o-3. Registered securities associations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78o, 78s, 78y, 80a-22 of this title.

§ 78o-4. Municipal securities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78o, 78s, 78y, 78*lll*, 80a-22 of this title.

§ 78q. Records and reports

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78f, 78o-3, 78o-4, 78q-1, 78s, 78y, 78hh, 78fff-1, 78iii of this title.

§ 78s. Registration, responsibilities, and oversight of self-regulatory organizations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78d-1, 78f, 78k-1, 78o-3, 78q, 78q-1, 78w, 78y, 78bb, 78hh of this title.

§ 78y. Court review of orders and rules

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78f, 78h, 78k-1, 78s, 78ccc of this title.

§ 78dd-1. Foreign corrupt practices by issuers

(a) Prohibited practices

It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78*l* of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails

or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(b) Definition

As used in this section, the term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.

(June 6, 1934, ch. 404, title I, § 30A, as added Dec. 19, 1977, Pub. L. 95-213, title I, § 103(a), 91 Stat. 1495.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78dd-2, 78ff of this title; title 22 section 2197.

§ 78dd-2. Foreign corrupt practices by domestic concerns

(a) Prohibited practices

It shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

(b) Penalties

(1)(A) Except as provided in subparagraph (B), any domestic concern which violates subsection (a) of this section shall, upon conviction, be fined not more than $1,000,000.

(B) Any individual who is a domestic concern and who willfully violates subsection (a) of this section shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

(2) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) of this section shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

(3) Whenever a domestic concern is found to have violated subsection (a) of this section, any employee or agent of such domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of a domestic concern, such fine shall not be paid, directly or indirectly, by such domestic concern.

(c) Civil action by Attorney General to prevent violations

Whenever it appears to the Attorney General that any domestic concern, or officer, director, employee, agent, or stockholder thereof, is engaged, or is about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing a permanent or temporary injunction or a temporary restraining order shall be granted without bond.

(d) Definitions

As used in this section:

(1) The term "domestic concern" means (A) any individual who is a citizen, national, or resident of the United States; or (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.

(3) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof. Such term includes the intrastate use of (A) a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(Pub. L. 95-213, title I, § 104, Dec. 19, 1977, 91 Stat. 1496.)

CODIFICATION

Section was enacted as part of Pub. L. 95-213, the Foreign Corrupt Practices Act of 1977, and not as part of act June 6, 1934, ch. 404, 48 Stat. 881, the Securities Exchange Act of 1934, which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 2197.

§ 78ff. Penalties

(a) Willful violations; false and misleading statements

Any person who willfully violates any provision of this chapter (other than section 78dd-1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $10,000, or imprisoned not more than five years, or both, except that when such person is an exchange, a fine not exceeding $500,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

(b) Failure to file information, documents, or reports

Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 78o of this title or any rule or regulation thereunder shall forfeit to the United States the sum of $100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

(c) Violations by issuers, officers, directors, stockholders, employees, or agents of issuers

(1) Any issuer which violates section 78dd-1(a) of this title shall, upon conviction, be fined not more than $1,000,000.

(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer,

who willfully violates section 78dd-1(a) of this title shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

(3) Whenever an issuer is found to have violated section 78dd-1(a) of this title, any employee or agent of such issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer.

(As amended Dec. 19, 1977, Pub. L. 95-213, title I, § 103(b), 91 Stat. 1496.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-213, § 103(b)(1), added "(other than section 78dd-1 of this title)" following "Any person who willfully violates any provision of this chapter".

Subsec. (c). Pub. L. 95-213, § 103(b)(2), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 2197.

§ 78kk. Authorization of appropriations

There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed $51,000,000 for the fiscal year ending June 30, 1976, $56,500,000 for the fiscal year ending September 30, 1977, $63,750,000 for the fiscal year ending September 30, 1978, $69,000,000 for the fiscal year ending September 30, 1979, and $79,000,000 for the fiscal year ending September 30, 1980. For fiscal years succeeding fiscal year 1980, there may be appropriated such sums as the Congress may hereafter authorize by law.

(As amended Apr. 13, 1977, Pub. L. 95-20, 91 Stat. 47; Dec. 19, 1977, Pub. L. 95-211, 91 Stat. 1492; Oct. 6, 1978, Pub. L. 95-425, § 1, 92 Stat. 962.

AMENDMENTS

1978—Pub. L. 95-425 added provision authorizing appropriations of not to exceed $69,000,000, and $79,000,000 for the fiscal years ending Sept. 30, 1979 and 1980, respectively, and substituted "fiscal year 1980" for "fiscal year 1978".

1977—Pub. L. 95-211 authorized appropriations of not to exceed $63,750,000 for the fiscal year ending Sept. 30, 1978, and substituted "For the fiscal years succeeding fiscal year 1978" for "For fiscal years succeeding the 1977 fiscal year" in the provisions relating to appropriations for succeeding fiscal years.

Pub. L. 95-20 substituted "$56,500,000" for "$55,000,000".

CHAPTER 2B-1—SECURITIES INVESTOR PROTECTION

Sec.

78fff-1. Powers and duties of a trustee [New].
(a) Trustee powers.
(b) Trustee duties.
(c) Reports by trustee to court.
(d) Investigations.
78fff-2. Special provisions of a liquidation proceeding [New].
(a) Notice and claims.
(b) Payments to customers.
(c) Customer related property.
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(e) Closeouts.
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78fff-3. SIPC advances [New].
(a) Advances for customers' claims.
(b) Other advances.
(c) Discretionary advances.
78fff-4. Direct payment procedure [New].
(a) Determination regarding direct payments.
(b) Notice.
(c) Payments to customers.
(d) Effect on claims.
(e) Jurisdiction of district courts.
(f) Discontinuance of direct payment procedures.
(g) References.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 78u of this title; title 11 App. section 742.

§ 78aaa. Short title

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-283, § 1, May 21, 1978, 92 Stat. 249, provided that: "This Act [enacting sections 78fff-1 to 78fff-4 of this title, amending sections 77c, 78c, 78k, and 78ccc to 78*lll* of this title and enacting provisions set out as a note under section 78k of this title] may be cited as the 'Securities Investor Protection Act Amendments of 1978'."

§ 78ccc. Securities Investor Protection Corporation

(a) Creation and membership

(1) Creation

There is hereby established a body corporate to be known as the "Securities Investor Protection Corporation" (hereafter in this chapter referred to as "SIPC"). SIPC shall be a nonprofit corporation and shall have succession until dissolved by Act of the Congress. SIPC shall—

(A) not be an agency or establishment of the United States Government; and

(B) except as otherwise provided in this chapter, be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act (D.C. Code, section 29-1001 and fol.).

(2) Membership

(A) Members of SIPC

SIPC shall be a membership corporation the members of which shall be all persons registered as brokers or dealers under section 78*o*(b) of this title, other than—

(i) persons whose principal business, in the determination of SIPC, taking into account business of affiliated entities, is conducted outside the United States and its territories and possessions; and

(ii) persons whose business as a broker or dealer consists exclusively of (I) the distribution of shares of registered open

end investment companies or unit investment trusts, (II) the sale of variable annuities, (III) the business of insurance, or (IV) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.

(B) Commission review

SIPC shall file with the Commission a copy of any determination made pursuant to subparagraph (A)(i). Within thirty days after the date of such filing, or within such longer period as the Commis..n may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall, consistent with the public interest and the purposes of this chapter, affirm, reverse, or amend any such determination of SIPC.

(C) Additional members

SIPC shall provide by rule that persons excluded from membership in SIPC under subparagraph (A)(i) may become members of SIPC under such conditions and upon such terms as SIPC shall require by rule, taking into account such matters as the availability of assets and the ability to conduct a liquidation if necessary.

(D) Disclosure

Any broker or dealer excluded from membership in SIPC under subparagraph (A)(i) shall, as required by the Commission by rule, make disclosures of its exclusion and other relevant information to the customers of such broker or dealer who are living in the United States or its territories and possessions.

(b) Powers

In addition to the powers granted to SIPC elsewhere in this chapter, SIPC shall have the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any State, Federal, or other court;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by its Board of Directors, such bylaws as may be necessary or appropriate to carry out the purposes of this chapter, including bylaws relating to—

(A) the conduct of its business; and

(B) the indemnity of its directors, officers, and employees (including any such person acting as trustee or otherwise in connection with a liquidation proceeding) for liabilities and expenses actually and reasonably incurred by any such person in connection with the defense or settlement of an action or suit if such person acted in good faith and in a manner reasonably believed to be consistent with the purposes of this chapter.

(4) to adopt, amend, and repeal, by its Board of Directors, such rules as may be necessary or appropriate to carry out the purposes of this chapter, including rules relating to—

(A) the definition of terms used in this chapter, other than those terms for which a definition is provided in section 78*lll* of this title;

(B) the procedures for the liquidation of members and direct payment procedures, including the transfer of customer accounts, the distribution of customer property, and the advance and payment of SIPC funds; and

(C) the exercise of all other rights and powers granted to it by this chapter;

(5) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this chapter in any State or other jurisdiction without regard to any qualification, licensing, or other statute in such State or other jurisdiction;

(6) to lease, purchase, accept gifts or donations of or otherwise acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of, any property, real, personal or mixed, or any interest therein, wherever situated;

(7) subject to the provisions of subsection (c) of this section, to elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them and fix the penalty thereof;

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to SIPC by this chapter; and

(9) by bylaw, to establish its fiscal year.

(c) Board of Directors

[*See main edition for text of (1)*]

(2) Number and appointment

The Board of Directors shall consist of seven persons as follows:

[*See main edition for text of (A) and (B)*]

(C) Five directors shall be appointed by the President, by and with the advice and consent of the Senate, as follows—

[*See main edition for text of (i)*]

(ii) two such directors shall be selected from the general public from among persons who are not associated with a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group, and who have not had any such association during the two years preceding appointment.

[*See main edition for text of (3) and (4)*]

(5) Compensation

All matters relating to compensation of directors shall be as provided in the bylaws of SIPC.

[*See main edition for text of (d)*]

(e) Bylaws and rules

(1) Proposed bylaw changes

The Board of Directors of SIPC shall file with the Commission a copy of any proposed bylaw or any proposed amendment to or repeal of any bylaw of SIPC (hereinafter in this paragraph collectively referred to as a "proposed bylaw change"), accompanied by a concise general statement of the basis and purpose of such proposed bylaw change. Each such proposed bylaw change shall take effect thirty days after the date of the filing of a copy thereof with the Commission, or upon such later date as SIPC may designate or such earlier date as the Commission may determine, unless—

(A) the Commission, by notice to SIPC setting forth the reasons therefor, disapproves such proposed bylaw change as being contrary to the public interest or contrary to the purposes of this chapter; or

(B) the Commission finds that such proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying SIPC in writing of such finding, require that the procedures set forth in paragraph (2) be followed with respect to such proposed bylaw change, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such paragraph.

(2) Proposed rule changes

(A) Filing of proposed rule changes

The Board of Directors of SIPC shall file with the Commission, in accordance with such rules as the Commission may prescribe, a copy of any proposed rule or any proposed amendment to or repeal of any rule of SIPC (hereinafter in this subsection collectively referred to as a "proposed rule change"), accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof, together with the terms of substance of such proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments with respect to such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this paragraph.

(B) Action by the Commission

Within thirty-five days after the date of publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which SIPC consents, the Commission shall—

(i) by order approve such proposed rule change; or

(ii) institute proceedings to determine whether such proposed rule change should be disapproved.

(C) Proceedings

Proceedings instituted with respect to a proposed rule change pursuant to subparagraph (B)(ii) shall include notice of the grounds for disapproval under consideration and opportunity for hearing, and shall be concluded within one hundred eighty days after the date of publication of notice of the filing of such proposed rule change. At the conclusion of such proceedings, the Commission shall, by order, approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for not more than sixty days if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which SIPC consents.

(D) Grounds for approval or disapproval

The Commission shall approve a proposed rule change if it finds that such proposed rule change is in the public interest and is consistent with the purposes of this chapter, and any proposed rule change so approved shall be given force and effect as if promulgated by the Commission. The Commission shall disapprove a proposed rule change if it does not make the finding referred to in the preceding sentence. The Commission shall not approve any proposed rule change prior to thirty days after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(E) Exception

Notwithstanding any other provision of this paragraph, a proposed rule change may take effect—

(i) upon the date of filing with the Commission, if such proposed rule change is designated by SIPC as relating solely to matters which the Commission, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the Commission shall for good cause determine. Any proposed rule change which takes effect under this clause shall be filed promptly thereafter and reviewed in accordance with the provisions of subparagraph (A).

At any time within sixty days after the date of filing of any rule change which has taken effect pursuant to this subparagraph, the Commission may summarily abrogate such rule change and require that it be refiled and reviewed in accordance with the provi-

sions of this paragraph, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. Any action of the Commission pursuant to the preceding sentence shall not affect the validity or force of a rule change during the period it was in effect and shall not be reviewable under section 78y of this title or deemed to be final agency action for purposes of section 704 of title 5.

(3) Action Required by Commission

The Commission may, by such rules as it determines to be necessary or appropriate in the public interest or to carry out the purposes of this chapter, require SIPC to adopt, amend, or repeal any SIPC bylaw or rule, whenever adopted.

(As amended Pub. L. 95-283, §§ 2-5, May 21, 1978, 92 Stat. 249-251.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a)(1)(B), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which is classified generally to chapter 10 (§ 29-1001 et seq.) of Title 29, Corporations, of the District of Columbia Code.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-283, § 2(a), in subsec. catchline substituted "Creation and membership" for "Creation", redesignated introductory material and cls. (1) and (3) as par. (1), and added par. 2, which incorporated provisions formerly contained in cl. (2) as par. (2)(A).

Subsec. (b). Pub. L. 95-283, § 3, in par. (1) substituted "State, Federal, or other court" for "court, State, or Federal", in par. (3) substituted provisions relating to adoption, etc., of bylaws by the Board of Directors, for provisions relating to adoption, etc., of bylaws and rules by the Board of Directors, added par. (4), and redesignated former pars. (4) to (8) as (5) to (9), respectively.

Subsec. (c)(2)(C)(ii). Pub. L. 95-283, § 4(a), substituted "a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group," for "any broker or dealer, within the meaning of paragraph (18) of section 78c(a) of this title, or similarly associated with a national securities exchange or other securities industry group".

Subsec. (c)(5). Pub. L. 95-283, § 4(b), in catchline substituted "Compensation" for "Compensation, etc.", and struck out provisions relating to determinations of dollar volume of trading on exchanges.

Subsec. (e). Pub. L. 95-283, § 5, in subsec. catchline added "and rules" following "Bylaws" and substituted provisions relating to procedures applicable to proposed changes in the bylaws and rules of SIPC and required action by the Commission with respect to any SIPC bylaw or rule, for provisions relating to procedures applicable to adoption of initial bylaws and rules of SIPC and any alteration, supplement, repeal, or addition, effective date of any such bylaw or rule, and required action by the Commission with respect to any SIPC bylaw or rule.

Subsec. (f). Pub. L. 95-283, § 2(b), struck out subsec. (f), which set forth qualifications for other members of SIPC.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78ggg of this title.

§ 78ddd. SIPC Fund

(a) In general

[*See main edition for text of (1)*]

(2) Balance of the fund

Except as otherwise provided in this section, the balance of the fund at any time shall consist of the aggregate at such time of the following items:

(A) Cash on hand or on deposit.

(B) Amounts invested in United States Government or agency securities.

(C) Such confirmed lines of credit as SIPC may from time to time maintain, other than those maintained pursuant to paragraph (4).

[*See main edition for text of (3)*]

(4) Other lines

SIPC may maintain such other confirmed lines of credit as it considers necessary or appropriate, and such other confirmed lines of credit shall not be included in the balance of the fund, but amounts received from such lines of credit may be disbursed by SIPC under this chapter as though such amounts were part of the fund.

[*See main edition for text of (b)*]

(c) Assessments

[*See main edition for text of (1)*]

(2) General assessment authority

SIPC shall, by bylaw, impose upon its members such assessments as, after consultation with self-regulatory organizations, SIPC may deem necessary and appropriate to establish and maintain the fund and to repay any borrowings by SIPC. Any assessments so made shall be in conformity with contractual obligations made by SIPC in connection with any borrowing incurred by SIPC. Subject to paragraph (3) and subsection (d)(1)(A) of this section, any such assessment upon the members, or any one or more classes thereof, may, in whole or in part, be based upon or measured by (A) the amount of their gross revenues from the securities business, or (B) all or any of the following factors: the amount or composition of their gross revenues from the securities business, the number or dollar volume of transactions effected by them, the number of customer accounts maintained by them or the amounts of cash and securities in such accounts, their net capital, the nature of their activities (whether in the securities business or otherwise) and the consequent risks, or other relevant factors.

(3) Limitations

Notwithstanding any other provision of this chapter—

(A) no assessment shall be made upon a member otherwise than pursuant to paragraph (1) or (2) of this subsection,

(B) an assessment may be made under paragraph (2) of this subsection at a rate in excess of one-half of one per centum during any twelve-month period if SIPC deter-

mines, in accordance with a bylaw, that such rate of assessment during such period will not have a material adverse effect on the financial condition of its members or their customers, except that no assessments shall be made pursuant to such paragraph upon a member which require payments during any such period which exceed in the aggregate one per centum of such member's gross revenues from the securities business for such period, and

[*See main edition for text of (C)*]

(d) Requirements respecting assessments and lines of credit

(1) Assessments

[*See main edition for text of (A) and (B)*]

(C) Minimum assessment

The minimum assessment imposed upon each member of SIPC shall be $25 per annum through the year ending December 31, 1979, and thereafter shall be the amount from time to time set by SIPC bylaw, but in no event shall the minimum assessment be greater than $150 per annum.

[*See main edition for text of (2)*]

(e) Prior trusts; overpayments and underpayments

[*See main edition for text of (1)*]

(2) Overpayments

To the extent that any payment by a member exceeds the maximum rate permitted by subsection (c) of this section, the excess shall be recoverable only against future payments by such member, except as otherwise provided by SIPC bylaw.

(3) Underpayments

If a member fails to pay when due all or any part of an assessment made upon such member, the unpaid portion thereof shall bear interest at such rate as may be determined by SIPC bylaw and, in addition to such interest, SIPC may impose such penalty charge as may be determined by SIPC bylaw. Any such penalty charge imposed upon a SIPC member shall not exceed 25 per centum of any unpaid portion of the assessment. SIPC may waive such penalty charge in whole or in part in circumstances where it considers such waiver appropriate.

(f) Borrowing authority

SIPC shall have the power to borrow moneys and to evidence such borrowed moneys by the issuance of bonds, notes, or other evidences of indebtedness, all upon such terms and conditions as the Board of Directors may determine in the case of a borrowing other than pursuant to subsection (g) of this section, or as may be prescribed by the Commission in the case of a borrowing pursuant to subsection (g) of this section. The interest payable on a borrowing pursuant to subsection (g) of this section shall be equal to the interest payable on the related notes or other obligations issued by the Commission to the Secretary of the Treasury. To secure the payment of the principal of, and interest and premium, if any, on, all bonds, notes, or other evidences of indebtedness so issued, SIPC may make agreements with respect to the amount of future assessments to be made upon members and may pledge all or any part of the assets of SIPC and of the assessments made or to be made upon members. Any such pledge of future assessments shall (subject to any prior pledge) be valid and binding from the time that it is made, and the assessments so pledged and thereafter received by SIPC, or any collection agent for SIPC, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind against SIPC or such collection agent whether pursuant to this chapter, in tort, contract or otherwise, irrespective of whether such parties have notice thereof. During any period when a borrowing by SIPC pursuant to subsection (g) of this section is outstanding, no pledge of any assessment upon a member to secure any bonds, notes, or other evidences of indebtedness issued other than pursuant to subsection (g) of this section shall be effective as to the excess of the payments under the assessment on such member during any twelve-month period over one-fourth of 1 per centum of such member's gross revenues from the securities business for such period. Neither the instrument by which a pledge is authorized or created, nor any statement or other document relative thereto, need be filed or recorded in any State or other jurisdiction. The Commission may by rule or regulation provide for the filing of any instrument by which a pledge or borrowing is authorized or created, but the failure to make or any defect in any such filing shall not affect the validity of such pledge or borrowing.

(g) SEC loans to SIPC

In the event that the fund is or may reasonably appear to be insufficient for the purposes of this chapter, the Commission is authorized to make loans to SIPC. At the time of application for, and as a condition to, any such loan, SIPC shall file with the Commission a statement with respect to the anticipated use of the proceeds of the loan. If the Commission determines that such loan is necessary for the protection of customers of brokers or dealers and the maintenance of confidence in the United States securities markets and the SIPC has submitted a plan which provides as reasonable an assurance of prompt repayment as may be feasible under the circumstances, then the Commission shall so certify to the Secretary of the Treasury, and issue notes or other obligations to the Secretary of the Treasury pursuant to subsection (h) of this section. If the Commission determines that the amount or time for payment of the assessments pursuant to such plan would not satisfactorily provide for the repayment of such loan, it may, by rules and regulations, impose upon the purchasers of equity securities in transactions on national securities exchanges and in the over-the-counter markets a transaction fee in such amount as at any time or from time to time it may determine to be appropriate, but not exceeding one-fifieth of 1 per centum of the purchase price of the securities.

No such fee shall be imposed on a transaction (as defined by rules or regulations of the Commission) of less than $5,000. For the purposes of the next preceding sentence, (1) the fee shall be based upon the total dollar amount of each purchase; (2) the fee shall not apply to any purchase on a national securities exchange or in an over-the-counter market by or for the account of a broker or dealer registered under section 78*o*(b) of this title unless such purchase is for an investment account of such broker or dealer (and for this purpose any transfer from a trading account to an investment account shall be deemed a purchase at fair market value); and (3) the Commission may, by rule, exempt any transaction in the over-the-counter markets or on any national securities exchange where necessary to provide for the assessment of fees on purchasers in transactions in such markets and exchanges on a comparable basis. Such fee shall be collected by the broker or dealer effecting the transaction for or with the purchaser, or by such other person as provided by the Commission by rule, and shall be paid to SIPC in the same manner as assessments imposed pursuant to subsection (c) of this section but without regard to the limits on such assessments, or in such other manner as the Commission may by rule provide.

[See main edition for text of (h)]

(i) Consolidated group

Except as otherwise provided by SIPC bylaw, gross revenues from the securities business of a member of SIPC shall be computed on a consolidated basis for such member and all its subsidiaries (other than the foreign subsidiaries of such member), and the operations of a member of SIPC shall include those of any business to which such member has succeeded.

(As amended Pub. L. 95-283, § 6, May 21, 1978, 92 Stat. 253.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-283, § 6(a), in par. (2) substituted "Except as otherwise provided in this section, the" for "The", in par. (2)(C) added provisions for inapplicability to other lines of credit, and added par. (4).

Subsec. (c). Pub. L. 95-283, § 6(b), in par. (2) struck out "or rule" following "bylaw", and in par. (3) struck out reference to section 78ccc(f) of this title in introductory material and "or rule" following "bylaw" in subpar. (B).

Subsec. (d)(1)(C). Pub. L. 95-283, § 6(c), added subsec. (d)(1)(C).

Subsec. (e). Pub. L. 95-283, § 6(d), in par. (2) substituted "be recoverable only against future payments by such member, except as otherwise provided by SIPC bylaw" for "not be recoverable except against future payments by such member in accordance with a bylaw or rule of SIPC", and in par. (3) substituted provisions authorizing interest and penalty charges to be imposed by SIPC bylaw and amount of penalty charge, for provisions authorizing interest to be imposed by SIPC bylaw or rule.

Subsec. (f). Pub. L. 95-283, § 6(e), struck out "examining authority as" preceding "collection agent for SIPC, shall immediately be subject".

Subsec. (g). Pub. L. 95-283, § 6(f), redesignated cls. (A) to (C) as (1) to (3), respectively, and, as so redesignated, in cl. (2) struck out applicability to a member of a national securities exchange and in cl. (3) substituted provisions relating to exemptions by rule of transactions in the over-the-counter market or on any national securities exchange, for provisions relating to exemptions by rules and regulations of transactions in the over-the-counter market, and added provisions authorizing the collection of fees by such other persons as designated by the Commission by rule for such purpose, and provisions relating to limits on manner of payment of fees.

Subsec. (i). Pub. L. 95-283, § 6(g), in subsec. catchline substituted "Consolidated group" for "'Gross revenues' defined", redesignated former par. (2) as entire section and, as so redesignated, substituted provisions relating to computations by a member, for provisions relating to computations by a broker or dealer. Pars. (1) and (3), which generally defined the term "gross revenues" and authorized the SIPC to define all other terms used in this subsec., respectively, were struck out.

§ 78eee. Protection of customers

(a) Determination of need of protection

[See main edition for text of (1)]

(2) Action by self-regulatory organization

If a self-regulatory organization has given notice to SIPC pursuant to subsection (a)(1) of this section with respect to a broker or dealer, and such broker or dealer undertakes to liquidate or reduce its business either pursuant to the direction of a self-regulatory organization or voluntarily, such self-regulatory organization may render such assistance or oversight to such broker or dealer as it considers appropriate to protect the interests of customers of such broker or dealer. The assistance or oversight by a self-regulatory organization shall not be deemed the assumption or adoption by such self-regulatory organization of any obligation or liability to customers, other creditors, shareholders, or partners of the broker or dealer, and shall not prevent or act as a bar to any action by SIPC.

(3) Action by SIPC

If SIPC determines that—

(A) any member of SIPC (including any person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers; and

(B) one or more of the conditions specified in subsection (b)(1) of this section exist with respect to such member,

SIPC may, upon notice to such member, file an application for a protective decree with any court of competent jurisdiction specified in section 78u(e) or 78aa, except that no such application shall be filed with respect to a member the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 78fff-3.

(4) Effect of other pending actions

An application with respect to a member of SIPC filed with a court under paragraph (3)—

(A) may, with the consent of the Commission, be combined with any action brought

by the Commission, including an action by the Commission for a temporary receiver pending an appointment of a trustee under subsection (b)(3) of this section; and

(B) may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding or any proceeding to reorganize, conserve, or liquidate such member or its property, or any proceeding to enforce a lien against property of such member.

(b) Court action

(1) Issuance of protective decree

Upon receipt of an application by SIPC under subsection (a)(3) of this section, the court shall forthwith issue a protective decree if the debtor consents thereto, if the debtor fails to contest such application, or if the court finds that such debtor—

(A) is insolvent within the meaning of the Bankruptcy Act [11 U.S.C. 1 et seq.], or is unable to meet its obligations as they mature;

(B) has committed an act of bankruptcy within the meaning of the Bankruptcy Act;

(C) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(D) is not in compliance with applicable requirements under the 1934 Act [15 U.S.C. 78a et seq.] or rules of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities; or

(E) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

Unless the debtor consents to the issuance of a protective decree, the application shall be heard three business days after the date on which it is filed, or at such other time as the court shall determine, taking into consideration the urgency which the circumstances require.

(2) Jurisdiction and powers of court

(A) Exclusive jurisdiction

Upon the filing of an application with a court for a protective decree with respect to a debtor, such court—

(i) shall have exclusive jurisdiction of such debtor and its property wherever located (including property located outside the territorial limits of such court and property held by any other person as security for a debt or subject to a lien);

(ii) shall have exclusive jurisdiction of any suit against the trustee with respect to a liquidation proceeding; and

(iii) except as inconsistent with the provisions of this chapter, shall have the jurisdiction, powers, and duties conferred upon a court of bankruptcy by the Bankruptcy Act [11 U.S.C. 1 et seq.], together with such other jurisdiction, powers, and duties as are prescribed by this chapter.

(B) Stay of pending actions

Pending the issuance of a protective decree under paragraph (1), the court with which an application has been filed—

(i) shall stay any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property, and shall continue such stay upon appointment of a trustee pursuant to paragraph (3);

(ii) may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor, including a suit by stockholders of the debtor which interfers with prosecution by the trustee of claims against former directors, officers, or employees of the debtor, and may continue such stay upon appointment of a trustee pursuant to paragraph (3);

(iii) may stay enforcement of, and upon appointment of a trustee pursuant to paragraph (3), may continue the stay for such period of time as may be appropriate, but shall not abrogate, the right of setoff provided in section 68 of the Bankruptcy Act [11 U.S.C. 108], and the right to enforce a valid, nonpreferential lien or pledge against the property of the debtor; and

(iv) may appoint a temporary receiver.

(3) Appointment of trustee and attorney

If the court issues a protective decree under paragraph (1), such court shall forthwith appoint, as trustee for the liquidation of the business of the debtor and as attorney for the trustee, such persons as SIPC, in its sole discretion, specifies. The persons appointed as trustee and as attorney for the trustee may be associated with the same firm. SIPC may, in its sole discretion, specify itself or one of its employees as trustee in any case in which SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than $750,000 and that there appear to be fewer than five hundred customers of such debtor. No person may be appointed to serve as trustee or attorney for the trustee if such person is not disinterested within the meaning of paragraph (6), except that for any specified purpose other than to represent a trustee in conducting a liquidation proceeding, the trustee may, with the approval of SIPC and the court, employ an attorney who is not disinterested. A trustee appointed under this paragraph shall qualify by filing a bond in the manner prescribed by the applicable provisions of the Bankruptcy Act [11 U.S.C. 1 et seq.], except that neither SIPC nor any employee of SIPC shall be required to file a bond when appointed as trustee.

(4) Reference to referee in bankruptcy

If the court issues a protective decree and appoints a trustee under this section, such court may, at any stage of the proceeding, refer the proceeding to a referee in bankrupt-

cy to hear and determine any or all matters, or to a referee in bankruptcy as special master to hear and report generally or upon specified matters. Only under special circumstances shall a reference be made to a special master who is not a referee in bankruptcy.

(5) Compensation for services and reimbursement of expenses

(A) Allowances in general

The court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred (hereinafter in this paragraph referred to as "allowances") by a trustee, and by the attorney for such a trustee, in connection with a liquidation proceeding. No allowances (other than reimbursement for proper costs and expenses incurred) shall be granted to SIPC or any employee of SIPC for serving as trustee. Allowances may be granted on an interim basis during the course of the liquidation proceeding at such times and in such amounts as the court considers appropriate.

(B) Allowances to referee in bankruptcy or special master

In the event a proceeding has been referred to a referee in bankruptcy or special master, the district judge may grant reasonable allowances to such referee in bankruptcy or a special master, in the manner provided for in a case filed under chapter X of the Bankruptcy Act [11 U.S.C. 501 et seq.] as now in effect or as amended from time to time.

(C) Application for allowances

Any person seeking allowances shall file with the court an application which complies in form and content with the provisions of the Bankruptcy Act [11 U.S.C. 1 et seq.] governing applications for allowances under such Act. A copy of such application shall be served upon SIPC when filed. The court shall fix a time for a hearing on such application, and notice of such hearing shall be given to the applicant, the trustee, the debtor, the creditors, SIPC, and such other persons as the court may designate, except that notice need not be given to customers whose claims have been or will be satisfied in full or to creditors who cannot reasonably be expected to receive any distribution during the course of the liquidation proceeding.

(D) Recommendations of SIPC and awarding of allowances

Whenever an application for allowances is filed pursuant to subparagraph (C), SIPC shall file its recommendation with respect to such allowances with the court prior to the hearing on such application and shall, if it so requests, be allowed a reasonable time after such hearing within which to file a further recommendation. In any case in which such allowances are to be paid by SIPC without reasonable expectation of recoupment thereof as provided in this chapter and there is no difference between the amount requested and the amounts recommended by SIPC, the court shall award the amounts recommended by SIPC. In determining the amount of allowances in all other cases, the court shall give due consideration to the nature, extent, and value of the services rendered, and shall place considerable reliance on the recommendation of SIPC.

(E) Applicable restrictions

The restrictions on sharing of compensation set forth in the Bankruptcy Act [11 U.S.C. 1 et seq.] shall apply to allowances.

(F) Charge against estate

Allowances granted by the court, including interim allowances, shall be charged aginst the general estate of the debtor as a cost and expense of administration. If the general estate is insufficient to pay allowances in whole or in part, SIPC shall advance such funds as are necessary for such payment.

(6) Disinterestedness

(A) Standards

For purposes of paragraph (3), a person shall not be deemed disinterested if—

(i) such person is a creditor (including a customer), stockholder, or partner of the debtor;

(ii) such person is or was an underwriter of any of the outstanding securities of the debtor or within five years prior to the filing date was the underwriter of any securities of the debtor;

(iii) such person is, or was within two years prior to the filing date, a director, partner, officer, or employee of the debtor or such an underwriter, or an attorney for the debtor or such an underwriter; or

(iv) it appears that such person has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such an underwriter, or for any other reason, an interest materially adverse to the interests of any class of creditors (including customers) or stockholders,

except that SIPC shall in all cases be deemed disinterested, and an employee of SIPC shall be deemed disinterested if such employee would, except for his association with SIPC, meet the standards set forth in this subparagraph.

(B) Hearing

The court shall fix a time for a hearing on disinterestedness, to be held promptly after the appointment of a trustee. Notice of such hearing shall be mailed at least ten days prior thereto to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor, and to the creditors and stockholders of the debtor, to SIPC, and to such other persons as the court may designate. The court may, in its discretion, also require that notice be given by publication

in such newspaper or newspapers of general circulation as it may designate. At such hearing, at any adjournment thereof, or upon application, the court shall hear objections to the retention in office of a trustee or attorney for a trustee on the grounds that such person is not disinterested.

[*See main edition for text of* (c)]

(d) SIPC participation

SIPC shall be deemed to be a party in interest as to all matters arising in a liquidation proceeding, with the right to be heard on all such matters, and shall be deemed to have intervened with respect to all such matters with the same force and effect as if a petition for such purpose had been allowed by the court.

(As amended Pub. L. 95-283; § 7, May 21, 1978, 92 Stat. 254.)

AMENDMENT OF SUBSEC. (b)(1) TO (5)

Pub. L. 95-598, title III, § 308(a) to (f), title IV, § 402(a), Nov. 6, 1978, 92 Stat. 2674, 2675, 2682, provided that, effective Oct. 1, 1979, subsec. (b)(1) to (5) is amended to read as follows:

(b) Court action

(1) Issuance of protective decree

Upon receipt of an application by SIPC under subsection (a)(3) of this section, the court shall forthwith issue a protective decree if the debtor consents thereto, if the debtor fails to contest such application, or if the court finds that such debtor—

(A) is insolvent within the meaning of section 101 of title 11, or is unable to meet its obligations as they mature;

(B) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(C) is not in compliance with applicable requirements under the 1934 Act [15 U.S.C. 78a et seq.] or rules of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities; or

(D) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

Unless the debtor consents to the issuance of a protective decree, the application shall be heard three business days after the date on which it is filed, or at such other time as the court shall determine, taking into consideration the urgency which the circumstances require.

(2) Jurisdiction and powers of court

(A) Exclusive jurisdiction

Upon the filing of an application with a court for a protective decree with respect to a debtor, such court—

(i) shall have exclusive jurisdiction of such debtor and its property wherever located (including property located outside the territorial limits of such court and property held by any other person as security for a debt or subject to a lien);

(ii) shall have exclusive jurisdiction of any suit against the trustee with respect to a liquidation proceeding; and

(iii) except as inconsistent with the provisions of this chapter, shall have the jurisdiction, powers, and duties conferred upon a court of the United States having jurisdiction over cases under title 11, together with such other jurisdiction, powers, and duties as are prescribed by this chapter.

(B) Stay of pending actions

Pending the issuance of a protective decree under paragraph (1), the court with which an application has been filed—

(i) shall stay any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property, and shall continue such stay upon appointment of a trustee pursuant to paragraph (3);

(ii) may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor, including a suit by stockholders of the debtor which interferes with prosecution by the trustee of claims against former directors, officers, or employees of the debtor, and may continue such stay upon appointment of a trustee pursuant to paragraph (3);

(iii) may stay enforcement of, and upon appointment of a trustee pursuant to paragraph (3), may continue the stay for such period of time as may be appropriate, but shall not abrogate any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate the right to enforce a valid, nonpreferential lien or pledge against the property of the debtor; and

(iv) may appoint a temporary receiver.

(3) Appointment of trustee and attorney

If the court issues a protective decree under paragraph (1), such court shall forthwith appoint, as trustee for the liquidation of the business of the debtor and as attorney for the trustee, such persons as SIPC, in its sole discretion, specifies. The persons appointed as trustee and as attorney for the trustee may be associated with the same firm. SIPC may, in its sole discretion, specify itself or one of its employees as trustee in any case in which SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than $750,000 and that there appear to be fewer than five hundred customers of such debtor. No person may be appointed to serve as trustee or attorney for the trustee if such person is not disinterested within the meaning of paragraph (6), except that for any specified purpose other than to represent a trustee in conducting a liquidation proceeding, the trustee may, with the approval of SIPC and

the court, employ an attorney who is not disinterested. A trustee appointed under this paragraph shall qualify by filing a bond in the manner prescribed by section 322 of title 11, except that neither SIPC nor any employee of SIPC shall be required to file a bond when appointed as trustee.

(4) Removal to bankruptcy court

Upon the issuance of a protective decree and appointment of a trustee, or a trustee and counsel, under this section, the court shall forthwith order the removal of the entire liquidation proceeding to the court of the United States in the same judicial district having jurisdiction over cases under title 11. The latter court shall thereupon have all of the jurisdiction, powers, and duties conferred by this chapter upon the court to which application for the issuance of the protective decree was made.

(5) Compensation for services and reimbursement of expenses.

(A) Allowances in general

The court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred (hereinafter in this paragraph referred to as "allowances") by a trustee, and by the attorney for such a trustee, in connection with a liquidation proceeding. No allowances (other than reimbursement for proper costs and expenses incurred) shall be granted to SIPC or any employee of SIPC for serving as trustee. Allowances may be granted on an interim basis during the course of the liquidation proceeding at such times and in such amounts as the court considers appropriate.

(B) Application for allowances

Any person seeking allowances shall file with the court an application which complies in form and content with the provisions of title 11 governing applications for allowances under such title. A copy of such application shall be served upon SIPC when filed. The court shall fix a time for a hearing on such application, and notice of such hearing shall be given to the applicant, the trustee, the debtor, the creditors, SIPC, and such other persons as the court may designate, except that notice need not be given to customers whose claims have been or will be satisfied in full or to creditors who cannot reasonably be expected to receive any distribution during the course of the liquidation proceeding.

(C) Recommendations of SIPC and awarding of allowances

Whenever an application for allowances is filed pursuant to subparagraph (B), SIPC shall file its recommendation with respect to such allowances with the court prior to the hearing on such application and shall, if it so requests, be allowed a reasonable time after such hearing within which to file a further recommendation. In any case in which such allowances are to be paid by SIPC without reasonable expectation of recoupment thereof as provided in this chapter and there is no difference between the amounts requested and the amounts recommended by SIPC, the court shall award the amounts recommended by SIPC. In determining the amount of allowances in all other cases, the court shall give due consideration to the nature, extent, and value of the services rendered, and shall place considerable reliance on the recommendation of SIPC.

(D) Applicable restrictions

The restrictions on sharing of compensation set forth in section 504 of title 11 shall apply to allowances.

(E) Charge against estate

Allowances granted by the court, including interim allowances, shall be charged against the general estate of the debtor as a cost and expense of administration. If the general estate is insufficient to pay allowances in whole or in part, SIPC shall advance such funds as are necessary for such payment.

REFERENCES IN TEXT

The Bankruptcy Act, and such Act, as amended, referred to in subsec. (b)(1)(A), (B), (2)(A)(iii), (3), (5)(B), (C), (E), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which classified generally to Title 11, Bankruptcy. Chapter X of the Bankruptcy Act is classified generally to chapter 10 (§ 501 et seq.) of Title 11. For complete classification of this Act to the Code, see Tables.

The 1934 Act, referred to in subsec. (b)(1)(D), means act June 6, 1934, ch. 404, 48 Stat. 881, as amended, known as the Securities Exchange Act of 1934, which is classified principally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

This chapter, referred to in subsec. (b)(2)(A)(iii), (5)(D), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-283, § 7(a), added par. (2), redesignated former par. (2) as (3) and, as so redesignated, revised format of provisions by setting out cls. (A) and (B) and added provisions relating to any person who was a member within 180 days prior to such determination and provisions relating to claims filed under section 78fff-3 of this title, and redesignated former par. (3) as (4) and, as so redesignated, substituted "with respect to a member of SIPC filed with a court under paragraph (3)" for "under paragraph (2)" in introductory material and added "may," preceding "with the" in cl. (A).

Subsec. (b). Pub. L. 95-283, § 7(b), in par. (1) added "protective" following "of" in catchline and substituted provisions relating to issuance of protective decrees, for provisions relating to specific findings necessary for issuance of a decree and uncontested, etc., applications, in par. (2) substituted "Jurisdiction and powers of court" for "Exclusive jurisdiction over debtor" in catchline and substituted provisions setting forth jurisdiction and powers of court with respect to exclusivity of such jurisdiction, for provisions relating to exclusive jurisdiction over the debtor, in par. (3) added "and attorney" following "trustee" in catchline and substituted provisions relating to appointment of trustee and attorney, for provisions relating to appointment of trustee, in par. (4) substituted "Reference to referee in bankruptcy" for "Debtor and filing

date defined" in catchline and substituted provisions relating to reference to referee in bankruptcy, for provisions defining the terms "debtor" and "filing date", and added pars. (5) and (6).

Subsec. (d). Pub. L. 95-283, § 7(c), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78fff-4, 78iii, 78*lll* of this title.

§ 78fff. General provisions of a liquidation proceeding

(a) Purposes

The purposes of a liquidation proceeding under this chapter shall be—

(1) as promptly as possible after the appointment of a trustee in such liquidation proceeding, and in accordance with the provisions of this chapter—

(A) to deliver customer name securities to or on behalf of the customers of the debtor entitled thereto as provided in section 78fff-2(c)(2) of this title; and

(B) to distribute customer property and (in advance thereof or concurrently therewith) otherwise satisfy net equity claims of customers to the extent provided in this section;

(2) to sell or transfer offices and other productive units of the business of the debtor;

(3) to enforce rights of subrogation as provided in this chapter; and

(4) to liquidate the business of the debtor.

(b) Application of Bankruptcy Act

To the extent consistent with the provisions of this chapter, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under, the Bankruptcy Act [11 U.S.C. 1 et seq.]. For purposes of applying the Bankruptcy Act to this chapter, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date under this chapter.

(c) Determination of customer status

In a liquidation proceeding under this chapter, whenever a person has acted with respect to cash or securities with the debtor after the filing date and in a manner which would have given him the status of a customer with respect to such cash or securities had the action occurred prior to the filing date, and the trustee is satisfied that such action was taken by the customer in good faith and prior to the appointment of the trustee, the date on which such action was taken shall be deemed to be the filing date for purposes of determining the net equity of such customer with respect to such cash or securities.

(d) Apportionment

In a liquidation proceeding under this chapter, any cash or securities remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and customer property in the proportion in which the general property of the debtor and the cash and securities of the customers of such debtor contributed to such lien or pledge. Securities apportioned to the general estate under this subsection shall be subject to the provisions of section 78*lll*(5)(A) of this title.

(e) Costs and expenses of administration

All costs and expenses of administration of the estate of the debtor and of the liquidation proceeding shall be borne by the general estate of the debtor to the extent it is sufficient therefor, and the priorities of distribution from the general estate shall be as provided in the Bankruptcy Act [11 U.S.C. 1 et seq.]. Costs and expenses of administration shall include payments pursuant to section 78fff-2(e) of this title and section 78fff-3(c)(1) of this title (to the extent such payments recovered securities which were apportioned to the general estate pursuant to subsection (d) of this section) and costs and expenses of SIPC employees utilized by the trustee pursuant to section 78fff-1(a)(2) of this title. All funds advanced by SIPC to a trustee for such costs and expenses of administration shall be recouped from the general estate as a first priority under the Bankruptcy Act.

(As amended Pub. L. 95-283, § 8, May 21, 1978, 92 Stat. 259.)

AMENDMENT OF SUBSECS. (b) AND (e)

Pub. L. 95-598, title III, § 308(g), (h), title IV, § 402(a), Nov. 6, 1978, 92 Stat. 2675, 2682, provided that, effective Oct. 1, 1979, subsecs. (b) and (e) are amended to read as follows:

(b) Application of title 11

To the extent consistent with the provisions of this chapter, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under chapers 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter.

(e) Costs and expenses of administration

All costs and expenses of administration of the estate of the debtor and of the liquidation proceeding shall be borne by the general estate of the debtor to the extent it is sufficient therefor, and the priorities of distribution from the general estate shall be as provided in section 726 of title 11. Costs and expenses of administration shall include payments pursuant to section 78fff-2(e) of this title and section 78fff-3(c)(1) of this title (to the extent such payments recovered securities which were apportioned to the general estate pursuant to subsection (d)) and costs and expenses of SIPC employees utilized by the trustee pursuant to section 78fff-1(a)(2) of this title. All funds advanced by SIPC to a trustee for such costs and expenses of administration shall be recouped from the general estate under section 507(a)(1) of title 11.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (3), (b), (c), (d), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the code, see Tables.

The Bankruptcy Act, referred to in subsecs. (b) and (e), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which is classified generally to Title 11, Bankruptcy. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Pub. L. 95-283 in the section catchline substituted "General provisions of a liquidation proceeding" for "Liquidation proceedings".

Subsec. (a). Pub. L. 95-283 in subsec. catchline substituted "Purposes" for "General purposes of liquidation proceeding", in introductory material substituted provisions relating to purposes of liquidation proceedings under this chapter, for provisions relating to purposes of any proceeding in which a trustee has been appointed under section 78eee(b)(3) of this title, in par. (1) substituted provisions requiring execution of authorities to deliver customer name securities and distribute customer property in accordance with this chapter, for provisions requiring execution of authorities to return specifically identifiable property and distribute the single and separate fund in accordance with this section, and in par. (2) substituted provisioins authorizing sale, etc., of productive units of the debtor, for provisions authorizing operation of the business of the debtor.

Subsec. (b). Pub. L. 95-283 in subsec. catchline substituted "Application of Bankruptcy Act" for "Powers and Duties of Trustee", and substituted provisions relating to applicability of Bankruptcy Act to liquidation proceedings, for provisions relating to the powers and duties of trustees. See section 78fff-1 of this title.

Subsec. (c). Pub. L. 95-283 in subsec. catchline substituted "Determination of customer status" for "Application of Bankruptcy Act", and substituted provisions relating to determination of status of a customer with respect to cash or securities, for provisions setting forth general and special provisions of the Bankruptcy Act applicable to liquidation proceedings, and defining terms for purposes of such applicability and the provisions of this section. See subsec. (b) of this section and section 78fff-2(c) of this title.

Subsec. (d). Pub. L. 95-283 in subsec. catchline substituted "Apportionment" for "Completion of open contractual commitments", and substituted provisions relating to apportionment of cash or securities remaining after the liquidation of a lien or pledge made by a debtor, for provisions relating to completion by the trustee of open contractual commitments, which were made in the ordinary course of the debtor's business and which were outstanding on the filing date. See section 78fff-2(e) of this title.

Subsec. (e). Pub. L. 95-283 in subsec. catchline substituted "Costs and expense of administration" for "Notice", and substituted provisions relating to costs and expenses of administration of the estate of the debtor and of the liquidation proceeding, for provisions relating to notice requirements for the trustee subsequent to appointment as trustee. See section 78fff-2(a)(1) of this title.

Subsec. (f). Pub. L. 95-283 struck out subsec. (f), requiring advances by the SIPC to the trustee for customers' claims and completion of open contractual commitments, and authorizing discretionary advances to the trustee for compensation of personnel deemed necessary for the liquidation proceeding. See section 78fff-3 of this title.

Subsec. (g). Pub. L. 95-283 struck out subsec. (g), setting forth provisions relating to payments to customers by the trustee, and provisions respecting the quantum of proof of claim required for such payment. See section 78fff-2(a)(2) and (b) of this title.

Subsec. (h). Pub. L. 95-283 struck out subsec. (h), relating to nonapplicability of provisions to proof of claim by associates and others connected in some way with the debtor. See section 78fff-2(a)(2) of this title.

Subsec. (i). Pub. L. 95-283 struck out subsec. (i), setting forth provisions relating to reports by the trustee to the court. See seciton 78fff-1(c) of this title.

Subsec. (j). Pub. L. 95-283 struck out subsec. (j) which related to nonapplicability of provisions to rights of persons to establish by formal proof such claims as they may have to payment or delivery of specific securities. See section 78fff-2(a)(4) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78fff-2, 78*lll* of this title.

§ 78fff-1. Powers and duties of a trustee

(a) Trustee powers

A trustee shall be vested with the same powers and title with respect to the debtor and the property of the debtor, including the same rights to avoid preferences, as a trustee in bankruptcy under the Bankruptcy Act [11 U.S.C. 1 et seq.] has with respect to a bankrupt and the property of a bankrupt. In addition, a trustee may, with the approval of SIPC but without any need for court approval—

(1) hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and other persons (including accountants) that are deemed by the trustee necessary for all or any purposes of the liquidation proceeding;

(2) utilize SIPC employees for all or any purposes of a liquidation proceeding; and

(3) margin and maintain customer accounts of the debtor for the purposes of section 78fff-2(f) of this title.

(b) Trustee duties

To the extent consistent with the provisions of this Act or as otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee in bankruptcy, except that a trustee may, but shall have no duty to, reduce to money any securities constituting customer property or in the general estate of the debtor. In addition, the trustee shall—

(1) deliver securities to or on behalf of customers to the maximum extent practicable in satisfaction of customer claims for securities of the same class and series of an issuer; and

(2) subject to the prior approval of SIPC but without any need for court approval, pay or guarantee all or any part of the indebtedness of the debtor to a bank, lender, or other person if the trustee determines that the aggregate market value of securities to be made available to the trustee upon the payment or guarantee of such indebtedness does not appear to be less than the total amount of such payment or guarantee.

(c) Reports by trustee to court

The trustee shall make to the court and to SIPC such written reports as may be required by the Bankruptcy Act [11 U.S.C. 1 et seq.] and shall include in such reports information with respect to the progress made in distributing cash and securities to customers. Such reports shall be in such form and detail as the Commission determines by rule to present fairly the results of the liquidation proceeding as of the date of or for the period covered by such reports, having due regard for the requirements of section 78*q* of this title and the rules prescribed under such section and the magnitude of items and transactions involved in connection with the operations of a broker or dealer.

(d) Investigations

The trustee shall—

(1) as soon as practicable, investigate the acts, conduct, property, liabilities, and finan-

cial condition of the debtor, the operation of its business, and any other matter, to the extent relevant to the liquidation proceeding, and report thereon to the court;

(2) examine, by deposition or otherwise, the directors and officers of the debtor and any other witnesses concerning any of the matters referreded to in paragraph (1);

(3) report to the court any facts ascertained by the trustee with respect to fraud, misconduct, mismanagement, and irregularities, and to any causes of action available to the estate; and

(4) as soon as practicable, prepare and submit, to SIPC and such other persons as the court designates and in such form and manner as the court directs, a statement of his investigation of matters referred to in paragraph (1).

(Pub. L. 91-598, § 7, as added Pub. L. 95-283, § 9, May 21, 1978, 92 Stat. 260.)

AMENDMENT OF SUBSECS. (a), (b), AND (c)

Pub. L. 95-598, title III, § 308(i) to (k), title IV, § 402(a), Nov. 6, 1978, 92 Stat. 2675, 2682, provided that, effective Oct. 1, 1979, subsecs. (a), (b), and (c) are amended to read as follows:

(a) Trustee powers

A trustee shall be vested with the same powers and title with respect to the debtor and the property of the debtor, including the same rights to avoid preferences, as a trustee in a case under title 11. In addition, a trustee may, with the approval of SIPC but without any need for court approval—

(1) hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and other persons (including accountants) that are deemed by the trustee necessary for all or any purposes of the liquidation proceeding;

(2) utilize SIPC employees for all or any purposes of a liquidation proceeding; and

(3) margin and maintain customer accounts of the debtor for the purposes of section 78fff-2 (f) of this title.

(b) Trustee duties

To the extent consistent with the provisions of this chapter or as otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7, except that a trustee may, but shall have no duty to, reduce to money any securities constituting customer property or in the general estate of the debtor. In addition, the trustee shall—

(1) deliver securities to or on behalf of customers to the maximum extent practicable in satisfaction of customer claims for securities of the same class and series of an issuer; and

(2) subject to the prior approval of SIPC but without any need for court approval, pay or guarantee all or any part of the indebtedness of the debtor to a bank, lender, or other person if the trustee determines that the aggregate market value of securities to be made available to the trustee upon the payment or guarantee of such indebtedness does not appear to be less than the total amount of such payment or guarantee.

(c) Reports by trustee to court

The trustee shall make to the court and to SIPC such written reports as may be required of a trustee in a case under chapter 7 of title 11, and shall include in such reports information with respect to the progress made in distributing cash and securities to customers. Such reports shall be in such form and detail as the Commission determines by rule to present fairly the results of the liquidation proceeding as of the date of or for the period covered by such reports, having due regard for the requirements of section 78q of this title and the rules prescribed under such section and the magnitude of items and transactions involved in connection with the operations of a broker or dealer.

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsecs.(a) and (c), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which is classified generally to Title 11, Bankruptcy. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78fff, 78fff-2, 78fff-3, 78fff-4 of this title.

§ 78fff-2. Special provisions of a liquidation proceeding

(a) Notice and claims

(1) Notice of proceedings

Promptly after the appointment of the trustee, such trustee shall cause notice of the commencement of proceedings under this section to be published in one or more newspapers of general circulation in the form and manner determined by the court, and at the same time shall cause a copy of such notice to be mailed to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor. Notice to creditors other than customers shall be given in the manner prescribed by the Bankruptcy Act [11 U.S.C. 1 et seq.], except that such notice shall be given by the trustee.

(2) Statement of claim

A customer shall file with the trustee a written statement of claim but need not file a formal proof of claim, except that no obligation of the debtor to any person associated with the debtor within the meaning of section 78c(a)(18) of this title or section 78c(a)(21) of this title, any beneficial owner of 5 per centum or more of the voting stock of the debtor, or any member of the immediate family of any such person or owner may be satisfied without formal proof of claim.

(3) Time limitations

No claim of a customer or other creditor of the debtor which is received by the trustee

after the expiration of the six-month period beginning on the date of publication of notice under paragraph (1) shall be allowed, except that the court may, upon application within such period and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian. Any claim of a customer for net equity which is received by the trustee after the expiration of such period of time as may be fixed by the court (not exceeding sixty days after the date of publication of notice under paragraph (1)) need not be paid or satisfied in whole or in part out of customer property, and, to the extent such claim is satisfied from moneys advanced by SIPC, it shall be satisfied in cash or securities (or both) as the trustee determines is most economical to the estate.

(4) Effect on claims

Except as otherwise provided in this section, and without limiting the powers and duties of the trustee to discharge obligations promptly as specified in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise as the court may provide such claims as such person may have against the debtor, including claims for the payment of money and the delivery of specific securities, without resort to moneys advanced by SIPC to the trustee.

(b) Payments to customers

After receipt of a written statement of claim pursuant to subsection (a)(2), of this section, the trustee shall promptly discharge, in accordance with the provisions of this section, all obligations of the debtor to a customer relating to, or net equity claims based upon, securities or cash, by the delivery of securities or the making of payments to or for the account of such customer (subject to the provisions of subsection (d) of this section and section 78fff-3(a) of this title insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the filing date. For purposes of this subsection, the court shall, among other things—

(1) with respect to net equity claims, authorize the trustee to satisfy claims out of moneys made available to the trustee by SIPC notwithstanding the fact that there has not been any showing or determination that there are sufficient funds of the debtor available to satisfy such claims; and

(2) with respect to claims relating to, or net equities based upon, securities of a class and series of an issuer which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute, in a form to be determined by the trustee, appropriate receipts, supporting affidavits, releases, and assignments, but shall be without prejudice to any right of a claimant to file formal proof of claim within the period specified in subsection (a)(3) of this section for any balance of securities or cash to which such claimant considers himself entitled.

(c) Customer related property

(1) Allocation of customer property

The trustee shall allocate customer property of the debtor as follows:

(A) first, to SIPC in repayment of advances made by SIPC pursuant to section 78fff-3(c)(1) of this title, to the extent such advances recovered securities which were apportioned to customer property pursuant to section 78fff(d) of this title;

(B) second, to customers of such debtor, who shall share ratably in such customer property on the basis and to the extent of their respective net equities;

(C) third, to SIPC as subrogee for the claims of customers;

(D) fourth, to SIPC in repayment of advances made by SIPC pursuant to section 78fff-3(c)(2) of this title.

Any customer property remaining after allocation in accordance with this paragraph shall become part of the general estate of the debtor. To the extent customer property and SIPC advances pursuant to section 78fff-3(a) of this title are not sufficient to pay or otherwise satisfy in full the net equity claims of customers, such customers shall be entitled, to the extent only of their respective unsatisfied net equities, to participate in the general estate as unsecured creditors. For purposes of allocating customer property under this paragraph, securities to be delivered in payment of net equity claims for securities of the same class and series of an issuer shall be valued as of the close of business on the filing date.

(2) Delivery of customer name securities

The trustee shall deliver customer name securities to or on behalf of a customer of the debtor entitled thereto if the customer is not indebted to the debtor. If the customer is so indebted, such customer may, with the approval of the trustee, reclaim customer name securities upon payment to the trustee, within such period of time as the trustee determines, of all indebtedness of such customer to the debtor.

(3) Recovery of transfers

Whenever customer property is not sufficient to pay in full the claims set forth in subparagraphs (A) through (D) of paragraph (1), the trustee may recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of the Bankruptcy Act [11 U.S.C. 1 et seq.]. Such recovered property shall be treated as customer property. For purposes of such recovery, the

property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding.

(d) Purchase of securities

The trustee shall, to the extent that securities can be purchased in a fair and orderly market, purchase securities as necessary for the delivery of securities to customers in satisfaction of their claims for net equities based on securities under section 78fff-1(b)(1) of this title and for the transfer of customer accounts under subsection (f) of this section, in order to restore the accounts of such customers as of the filing date. To the extent consistent with subsection (c) of this section, customer property and moneys advanced by SIPC may be used by the trustee to pay for securities so purchased. Moneys advanced by SIPC for each account of a separate customer may not be used to purchase securities to the extent that the aggregate value of such securities on the filing date exceeded the amount permitted to be advanced by SIPC under the provisions of section 78fff-3(a) of this title.

(e) Closeouts

(1) In general

Any contract of the debtor for the purchase or sale of securities in the ordinary course of its business with other brokers or dealers which is wholly executory on the filing date shall not be completed by the trustee, except to the extent permitted by SIPC rule. Upon the adoption by SIPC of rules with respect to the closeout of such a contract but prior to the adoption of rules with respect to the completion of such a contract, the other broker or dealer shall close out such contract, without unnecessary delay, in the best available market and pursuant to such SIPC rules. Until such time as SIPC adopts rules with respect to the completion or closeout of such a contract, such a contract shall be closed out in accordance with Commission Rule S6(d)-1 as in effect on May 21, 1978, or any comparable rule of the Commission subsequently adopted, to the extent not inconsistent with the provisions of this subsection.

(2) Net profit or loss

A broker or dealer shall net all profits and losses on all contracts closed out under this subsection and—

(A) if such broker or dealer shows a net profit on such contracts, he shall pay such net profit to the trustee; and

(B) if such broker or dealer sustains a net loss on such contracts, he shall be entitled to file a claim against the debtor with the trustee in the amount of such net loss.

To the extent that a net loss sustained by a broker or dealer arises from contracts pursuant to which such broker or dealer was acting for its own customer, such broker or dealer shall be entitled to receive funds advanced by SIPC to the trustee in the amount of such loss, except that such broker or dealer may not receive more than $40,000 for each separate customer with respect to whom it sustained a loss. With respect to a net loss which is not payable under the preceding sentence from funds advanced by SIPC, the broker or dealer shall be entitled to participate in the general estate as an unsecured creditor.

(3) Registered clearing agencies

Neither a registered clearing agency which by its rules has an established procedure for the closeout of open contracts between an insolvent broker or dealer and its participants, nor its participants to the extent such participants' claims are or may be processed within the registered clearing agency, shall be entitled to receive SIPC funds in payment of any losses on such contracts, except as SIPC may otherwise provide by rule. If such registered clearing agency or its participants sustain a net loss on the closeout of such contracts with the debtor, they shall have the right to participate in the general estate as unsecured creditors to the extent of such loss. Any funds or other property owed to the debtor, after the closeout of such contracts, shall be promptly paid to the trustee. Rules adopted by SIPC under this paragraph shall provide that in no case may a registered clearing agency or its participants, to the extent such participants' claims are or may be processed within the registered clearing agency, be entitled to receive funds advanced by SIPC in an amount greater, in the aggregate, than could be received by the participants if such participants proceeded individually under paragraph (1) and (2).

(4) Definition

For purposes of this subsection, the term "customer" does not include any person who—

(A) is a broker or dealer;

(B) had a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, was part of the capital of the claiming broker or dealer or was subordinated to the claims of any or all creditors of such broker or dealer; or

(C) had a relationship of the kind specified in section 78fff-3(a)(5) of this title with the debtor.

A claiming broker or dealer shall be deemed to have been acting on behalf of its customer if it acted as agent for such customer or if it held such customer's order which was to be executed as a part of its contract with the debtor.

(f) Transfer of customer accounts

In order to facilitate the prompt satisfaction of customer claims and the orderly liquidation of the debtor, the trustee may, pursuant to terms satisfactory to him and subject to the prior approval of SIPC, sell or otherwise transfer to another member of SIPC, without consent of any customer, all or any part of the account of a customer of the debtor. In connection with any such sale or transfer to another member of SIPC and subject to the prior approval of SIPC, the trustee may—

(1) waive or modify the need to file a written statement of claim pursuant to subsection (a)(2) of this section; and

(2) enter into such agreements as the trustee considers appropriate under the circumstances to indemnify any such member of SIPC against shortages of cash or securities in the customer accounts sold or transferred.

The funds of SIPC may be made available to guarantee or secure any indemnification under paragraph (2). The prior approval of SIPC to such indemnification shall be conditioned, among such other standards as SIPC may determine, upon a determination by SIPC that the probable cost of any such indemnification can reasonably be expected not to exceed the cost to SIPC of proceeding under section 78fff-3(a) of this title and section 78fff-3(b) of this title.

(Pub. L. 91-598, § 8, as added Pub. L. 95-283, § 9, May 21,1978, 92 Stat. 261.)

AMENDMENT OF SUBSECS. (a)(1) AND (c)(3)

Pub. L. 95-598, title III, § 308(l), (m), title IV, § 402(a), Nov. 6, 1978, 92 Stat. 2675, 2682, provided that, effective Oct. 1, 1979, subsecs. (a)(1) and (c)(3) are amended to read as follows:

(a) Notice and claims

(1) Notice of proceedings

Promptly after the appointment of the trustee, such trustee shall cause notice of the commencement of proceedings under this section to be published in one or more newspapers of general circulation in the form and manner determined by the court, and at the same time shall cause a copy of such notice to be mailed to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor. Notice to creditors other than customers shall be given in the manner prescribed by title 11, except that such notice shall be given by the trustee.

(c) Customer related property

(3) Recovery of transfers

Whenever customer property is not sufficient to pay in full the claims set forth in subparagraphs (A) through (D) of paragraph (1), the trustee may recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of title 11. Such recovered property shall be treated as customer property. For purposes of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding.

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsecs. (a)(1) and (c)(3), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which is classified generally to Title 11, Bankruptcy. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78fff, 78fff-1, 78fff-3, 78fff-4, 78lll of this title.

§ 78fff-3. SIPC advances

(a) Advances for customers' claims

In order to provide for prompt payment and satisfaction of net equity claims of customers of the debtor, SIPC shall advance to the trustee such moneys, not to exceed $100,000 for each customer, as may be required to pay or otherwise satisfy claims for the amount by which the net equity of each customer exceeds his ratable share of customer property, except that—

(1) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is a claim for cash, as distinct from a claim for securities, the amount advanced to satisfy such claim for cash shall not exceed $40,000 for each such customer;

(2) a customer who holds accounts with the debtor in separate capacities shall be deemed to be a different customer in each capacity;

(3) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is satisfied by the delivery of securities purchased by the trustee pursuant to section 78fff-2(d) of this title, the securities so purchased shall be valued as of the filing date for purposes of applying the dollar limitations of this subsection;

(4) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any net equity claim of a customer who is a general partner, officer, or director of the debtor, a beneficial owner of five per centum or more of any class of equity security of the debtor (other than a nonconvertible stock having fixed preferential dividend and liquidation rights), a limited partner with a participation of five per centum or more in the net assets or net profits of the debtor, or a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the debtor; and

(5) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy any net equity claim of any customer who is a broker or dealer or bank, other than to the extent that it shall be established to the satisfaction of the trustee, from the books and records of the debtor or from the books and records of a broker or dealer or bank, or otherwise, that the net equity claim of such broker or dealer or bank against the debtor arose out of transactions for customers of such broker or dealer or bank (which customers are not themselves a broker or dealer or bank or a person described in paragraph (4)), in which event each such customer of such broker or dealer or bank shall be deemed a separate customer of the debtor.

To the extent moneys are advanced by SIPC to the trustee to pay or otherwise satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such cus-

tomers with the rights and priorities provided in this chapter, except that SIPC as subrogee may assert no claim against customer property until after the allocation thereof to customers as provided in section 78fff–2(c) of this title.

(b) Other advances

SIPC shall advance to the trustee—

(1) such moneys as may be required to carry out section 78fff–2(e) of this title; and

(2) to the extent the general estate of the debtor is not sufficient to pay any and all costs and expenses of administration of the estate of the debtor and of the liquidation proceeding, the amount of such costs and expenses.

(c) Discretionary advances

SIPC may advance to the trustee such moneys as may be required to—

(1) pay or guarantee indebtedness of the debtor to a bank, lender, or other person under section 78fff–1(b)(2) of this title;

(2) guarantee or secure any indemnity under section 78fff–2(f) of this title; and

(3) purchase securities under section 78fff–2(d) of this title.

(Pub. L. 91–598, § 9, as added Pub. L. 95–283, § 9, May 21, 1978, 92 Stat. 265.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78eee, 78fff, 78fff–2, 78fff–4 of this title.

§ 78fff–4. Direct payment procedure

(a) Determination regarding direct payments

If SIPC determines that—

(1) any member of SIPC (including a person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers;

(2) one or more of the conditions specified in section 78eee(b)(1) of this title exist with respect to such member;

(3) the claim of each customer of the member is within the limits of protection provided in section 78fff–3(a) of this title;

(4) the claims of all customers of the member aggregate less than $250,000;

(5) the cost to SIPC of satisfying customer claims under this section will be less than the cost under a liquidation proceeding; and

(6) such member's registration as a broker-dealer under section 78o(b) of this title has been terminated, or such member has consented to the use of the direct payment procedure set forth in this section,

SIPC may, in its discretion, use the direct payment procedure set forth in this section in lieu of instituting a liquidation proceeding with respect to such member.

(b) Notice

Promptly after a determination under subsection (a) of this section that the direct payment procedure is to be used with respect to a member, SIPC shall cause notice of such direct payment procedure to be published in one or more newspapers of general circulation in a form and manner determined by SIPC, and at the same time shall cause to be mailed a copy of such notice to each person who appears, from the books and records of such member, to have been a customer of the member with an open account within the past twelve months, to the address of such person as it appears from the books and records of such member. Such notice shall state that SIPC will satisfy customer claims directly, without a liquidation proceeding, and shall set forth the form and manner in which claims may be presented. A direct payment procedure shall be deemed to commence on the date of first publication under this subsection and no claim by a customer shall be paid or otherwise satisfied by SIPC unless received within the six-month period beginning on such date, except that SIPC shall, upon application within such period, and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian.

(c) Payment to customers

SIPC shall promptly satisfy all obligations of the member to each of its customers relating to, or net equity claims based upon, securities or cash by the delivery of securities or the effecting of payments to such customer (subject to the provisions of section 78fff–2(d) of this title and section 78fff–3(a) of this title insofar as such obligations are ascertainable from the books and records of the member or are otherwise established to the satisfaction of SIPC. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the date of publication under subsection (b) of this section. Any payment or delivery of securities pursuant to this section may be conditioned upon the execution and delivery, in a form to be determined by SIPC, of appropriate receipts, supporting affidavits, releases, and assignments. To the extent moneys of SIPC are used to satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers against the member.

(d) Effect on claims

Except as otherwise provided in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise such claims as such person may have against the member, including claims for the payment of money and the delivery of specific securities, without resort to moneys of SIPC.

(e) Jurisdiction of district courts

After SIPC has published notice of the institution of a direct payment procedure under this section, any person aggrieved by any determination of SIPC with respect to his claim under subsection (c) of this section may, within six months following mailing by SIPC of its determination with respect to such claim, seek a

final adjudication of such claim. The district courts of the United States shall have original and exclusive jurisdiction of any civil action for the adjudication of such claim, without regard to the citizenship of the parties or the amount in controversy. Any such action shall be brought in the judicial district where the head office of the debtor is located. Any determination of the rights of a customer under subsection (c) of this section shall not prejudice any other right or remedy of the customer against the member.

(f) Discontinuance of direct payment procedures

If, at any time after the institution of a direct payment procedure with respect to a member, SIPC determines, in its discretion, that continuation of such direct payment procedure is not appropriate, SIPC may cease such direct payment procedure and, upon so doing, may seek a protective decree pursuant to section 78eee of this title. To the extent payments of cash, distributions of securities, or determinations with respect to the validity of a customer's claim are made under this section, such payments, distributions, and determinations shall be recognized and given full effect in the event of any subsequent liquidation proceeding. Any action brought under subsection (e) of this section and pending at the time of the appointment of a trustee under section 78eee(b)(3) of this title shall be permanently stayed by the court at the time of such appointment, and the court shall enter an order directing the transfer or removal to it of such suit. Upon such removal or transfer the complaint in such action shall constitute the plaintiff's claim in the liquidation proceeding, if appropriate, and shall be deemed received by the trustee on the date of his appointment regardless of the date of actual transfer or removal of such action.

(g) References

For purposes of this section, any reference to the trustee in sections 78fff-1(b)(1), 78fff-2(d), 78fff-2(f), 78fff-3(a), 78*lll*(5) and 78*lll*(12) of this title shall be deemed a reference to SIPC, and any reference to the date of publication of notice under section 78fff-2(a) of this title shall be deemed a reference to the publication of notice under this section.

(Pub. L. 91-598, § 10, as added Pub. L. 95-283, § 9, May 21, 1978, 92 Stat. 266.)

AMENDMENT OF SUBSEC. (e)

Pub. L. 95-598, title III, § 308(n), title IV, § 402(a), Nov. 6, 1978, 92 Stat. 2675, 2682, provided that, effective Oct. 1, 1979, subsec.(e) is amended to read as follows:

(e) Jurisdiction of Bankruptcy courts

After SIPC has published notice of the institution of a direct payment procedure under this section, any person aggrieved by any determination of SIPC with respect to his claim under subsection (c) of this section may, within six months following mailing by SIPC of its determination with respect to such claim, seek a final adjudication of such claim. The courts of the United States having jurisdiction over cases under title 11 shall have original and exclusive jurisdiction of any civil action for the adjudication of such claim, without regard to the citizenship of the parties or the amount in controversy. Any such action shall be brought in the judicial district where the head office of the debtor is located. Any determination of the rights of a customer under subsection (c) of this section shall not prejudice any other right or remedy of the customer against the member.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78*lll* of this title.

§ 78ggg. SEC functions

(a) Administrative procedure

Determinations of the Commission, for purposes of making rules pursuant to section 78ccc(e)(3) and section 78iii(f) of this title shall be after appropriate notice and opportunity for a hearing, and for submission of views of interested persons in accordance with the rulemaking procedures specified in section 553 of title 5, but the holding of a hearing shall not prevent adoption of any such rule or regulation upon expiration of the notice period specified in subsection (d) of such section and shall not be required to be on a record within the meaning of subchapter II of chapter 5 of such title.

[*See main edition for text of* (b) *and* (c)]

(Pub. L. 91-598, § 11(a)-(c), formerly § 7(a)-(c), Dec. 30, 1970, 84 Stat. 1652, 1653, renumbered and amended Pub. L. 95-283, §§ 9, 10, May 21, 1978, 92 Stat. 260, 268.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-283 substituted "pursuant to section 78ccc(e)(3) and section 78iii(f) of this title" for "or regulations pursuant to section 78ccc(e) and 78iii(f) of this title".

§ 78hhh. Examining authority functions

Each member of SIPC shall file with such member's examining authority, or collection agent if a collection agent has been designated pursuant to section 78iii(a) of this title, such information (including reports of, and information with respect to, the gross revenues from the securities business of such member, including the composition thereof, transactions in securities effected by such member, and other information with respect to such member's activities, whether in the securities business or otherwise, including customer accounts maintained, net capital employed, and activities conducted) as SIPC may determine to be necessary or appropriate for the purpose of making assessments under section 78ddd of this title. The examining authority or collection agent shall file with SIPC all or such part of such information (and such compilations and analyses thereof) as SIPC, by bylaw or rule, shall prescribe. No application, report, or document filed pursuant to this section shall be deemed to be filed pursuant to section 78r of this title.

(Pub. L. 91-598, § 12, formerly § 8, Dec. 30, 1970, 84 Stat. 1653, renumbered and amended Pub. L. 95-283, §§ 9, 11, May 21, 1978, 92 Stat. 260, 268.)

AMENDMENTS

1978—Pub. L. 95-283 added provisions relating to applicability to a collection agent.

§ 78iii. Functions of self-regulatory organizations

(a) Collection agent

Each self-regulatory organization shall act as collection agent for SIPC to collect the assessments payable by all members of SIPC for whom such self-regulatory organization is the examining authority, unless SIPC designates a self-regulatory organization other than the examining authority to act as collection agent for any member of SIPC who is a member of or participant in more than one self-regulatory organization. If the only self-regulatory organization of which a member of SIPC is a member or in which it is a participant is a registered clearing agency that is not the examining authority for the member, SIPC may, nevertheless, designate such registered clearing agency as collection agent for the member or may require that payments be made directly to SIPC. The collection agent shall be obligated to remit to SIPC assessments made under section 78ddd of this title only to the extent that payments of such assessment are received by such collection agent. Members of SIPC who are not members of or participants in a self-regulatory organization shall make payments directly to SIPC.

(b) Immunity

No self-regulatory organization shall have any liability to any person for any action taken or omitted in good faith pursuant to section 78eee(a)(1) and section 78eee(a)(2) of this title.

(c) Inspections

The self-regulatory organization of which a member of SIPC is a member or in which it is a participant shall inspect or examine such member for compliance with applicable financial responsibility rules, except that—

(1) if the self-regulatory organization is a registered clearing agency, the Commission may designate itself as responsible for the examination of such member for compliance with applicable financial responsibility rules; and

(2) if a member of SIPC is a member of or participant in more than one self-regulatory organization, the Commission, pursuant to section 78q(d) of this title, shall designate one of such self-regulatory organizations or itself as responsible for the examination of such member for compliance with applicable financial responsibility rules.

[*See main edition for text of* (d) *and* (e)]

(f) Financial condition of members

The Commission may, by such rules as it determines necessary or appropriate in the public interest and to carry out the purposes of this chapter, require any self-regulatory organization to furnish SIPC with reports and records (or copies thereof) relating to the financial condition of members of or participants in such self-regulatory organization.

(Pub. L. 91-598, § 13, formerly § 9, Dec. 30, 1970, 84 Stat. 1654, amended Pub. L. 94-29, § 26, June 4, 1975, 89 Stat. 163, renumbered and amended Pub. L. 95-283, §§ 9, 12, May 21, 1978, 92 Stat. 260, 269.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-283, § 12(a), in subsec. catchline substituted "Collection" for "Collecting", added provisions relating to designation of a self-regulatory organization other than the examining authority to act as collection agent and provisions relating to designation of a registered clearing agency as collection agent, and substituted provisions relating to remittances by the collection agent to SIPC, for provisions relating to remittances by an examining authority to SIPC.

Subsec. (b). Pub. L. 95-283, § 12(b), added reference to section 78eee(a)(2) of this title.

Subsec. (c). Pub. L. 95-283, § 12(c), revised existing format and provisions into introductory material and cl. (2) and, as so revised, in introductory material added provisions respecting participation by a member of SIPC in a self-regulatory organization and in cl. (2) added provisions respecting such participation and authorization for the Commission to designate itself as responsible for the statutory examination, and added cl. (1).

Subsec. (f). Pub. L. 95-283, § 12(d), substituted provisions authorizing the Commission to set out rules requiring self-regulatory organizations to furnish SIPC with reports and records of members or participants in such self-regulatory organizations, for provisions authorizing the Commission to set out rules, and regulations requiring self-regulatory organizations to adopt rules, practices, and procedures respecting inspections and examinations of members and examiners, to furnish SIPC and the Commission with reports and records of members, and to inspect or examine members.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78ddd, 78ggg, 78hhh, 78*lll* of this title.

§ 78jjj. Prohibited acts

(a) Failure to pay assessment, etc.

If a member of SIPC shall fail to file any report or information required pursuant to this chapter, or shall fail to pay when due all or any part of an assessment made upon such member pursuant to this chapter, and such failure shall not have been cured, by the filing of such report or information or by the making of such payment, together with interest and penalty thereon, within five days after receipt by such member of written notice of such failure given by or on behalf of SIPC, it shall be unlawful for such member, unless specifically authorized by the Commission, to engage in business as a broker or dealer. If such member denies that it owes all or any part of the amount specified in such notice, it may after payment of the full amount so specified commence an action against SIPC in the appropriate United States district court to recover the amount it denies owing.

(b) Engaging in business after appointment of trustee or initiation of direct payment procedure

It shall be unlawful for any broker or dealer for whom a trustee has been appointed pursuant to this chapter or for whom a direct payment procedure has been initiated to engage thereafter in business as a broker or dealer, unless the Commission otherwise determines in the public interest. The Commission may by order bar or suspend for any period, any officer, director, general partner, owner of 10 per

centum or more of the voting securities, or controlling person of any broker or dealer for whom a trustee has been appointed pursuant to this chapter or for whom a direct payment procedure has been initiated from being or becoming associated with a broker or dealer, if after appropriate notice and opportunity for hearing, the Commission shall determine such bar or suspension to be in the public interest.

(c) Concealment of assets; false statements or claims

(1) Specific prohibited acts

Any person who, directly or indirectly, in connection with or in contemplation of any liquidation proceeding or direct payment procedure—

(A) employs any device, scheme, or artifice to defraud;

(B) engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(C) fraudulently or with intent to defeat this chapter—

(i) conceals or transfers any property belonging to the estate of a debtor;

(ii) makes a false statement or account;

(iii) presents or uses any false claim for proof against the estate of a debtor;

(iv) receives any material amount of property from a debtor;

(v) gives, offers, receives, transfers, or obtains any money or property, remuneration, compensation, reward, advantage, other consideration, or promise thereof, for acting or forebearing to act;

(vi) conceals, destroys, mutilates, falsifies, makes a false entry in, or otherwise falsifies any document affecting or relating to the property or affairs of a debtor; or

(vii) withholds, from any person entitled to its possession, any document affecting or relating to the property or affairs of a debtor,

shall be fined not more than $50,000 or imprisoned for not more than five years, or both.

(2) Fraudulent conversion

Any person who, directly or indirectly steals, embezzles, or fraudulently, or with intent to defeat this chapter, abstracts or converts to his own use or to the use of another any of the moneys, securities, or other assets of SIPC, or otherwise defrauds or attempts to defraud SIPC or a trustee by any means, shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(Pub. L. 91-598, § 14, formerly § 10, Dec. 30, 1970, 84 Stat. 1655, renumbered and amended Pub. L. 95-283, §§ 9, 13, May 21, 1978, 92 Stat. 260, 269.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (c)(1)(C), (2), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-283, § 13(a), added "and penalty" following "interest", and substituted "it" for "he" wherever appearing.

Subsec. (b). Pub. L. 95-283, § 13(b), in subsec. catchline "or initiation of direct payment procedure" following "trustee", and inserted references to initiation of direct payment procedure in two places.

Subsec. (c). Pub. L. 95-283, § 13(c), in subsec. catchline substituted "Concealment of assets; false statements or claims" for "Embezzlement, etc., of assets of SIPC", added par. (1), and designated existing provisions as par. (2) and, as so designated, added references to direct or indirect acts, and provisions covering defrauding or attempts to defraud SIPC or a trustee, and substituted provisions covering activities constituting fraudulent, or with intent to defeat this chapter, abstracts or conversions, for provisions covering activities constituting unlawfully abstracting or unlawfully and willfully converting moneys, etc.

§ 78kkk. Miscellaneous provisions

[See main edition for text of (a)]

(b) Liability of members of SIPC

Except for such assessments as may be made upon such member pursuant to the provisions of section 78ddd of this title, no member of SIPC shall have any liability under this chapter as a member of SIPC for, or in connection with, any act or omission of any other broker or dealer whether in connection with the conduct of the business or affairs of such broker or dealer or otherwise and, without limiting the generality of the foregoing, no member shall have any liability for or in respect of any indebtedness or other liability of SIPC.

(c) Liability of SIPC and Directors, officers, or employees

Neither SIPC nor any of its Directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter contemplated by this chapter.

(d) Advertising

SIPC shall by bylaw prescribe the manner in which a member of SIPC may display any sign or signs (or include in any advertisement a statement) relating to the protection to customers and their accounts, or any other protections, afforded under this chapter. No member may display any such sign, or include in an advertisement any such statement, except in accordance with such bylaws. SIPC may also by bylaw prescribe such minimal requirements as it considers necessary and appropriate to require a member of SIPC to provide public notice of its membership in SIPC.

(e) SIPC exempt from taxation

SIPC, its property, its franchise, capital, reserves, surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of SIPC shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed. Assessments made upon a member of SIPC shall constitute ordinary and necessary expenses in carrying on the business of such member for the purpose of section 162(a) of title 26. The contribution and transfer to SIPC of funds or securities held by any trust established by a national securities

exchange prior to January 1, 1970, for the purpose of providing assistance to customers of members of such exchange, shall not result in any taxable gain to such trust or give rise to any taxable income to any member of SIPC under any provision of title 26, nor shall such contribution or transfer, or any reduction in assessments made pursuant to this chapter, in any way affect the status, as ordinary and necessary expenses under section 162(a) of title 26, of any contributions made to such trust by such exchange at any time prior to such transfer. Upon dissolution of SIPC, none of its net assets shall inure to the benefit of any of its members.

(f) Section 78t(a) of this title not to apply

The provisions of subsection (a) of section 78t of this title shall not apply to any liability under or in connection with this chapter.

(g) SEC study of unsafe or unsound practices

Not later than twelve months after December 30, 1970, the Commission shall compile a list of unsafe or unsound practices by members of SIPC in conducting their business and report to the Congress (1) the steps being taken under the authority of existing law to eliminate those practices and (2) recommendations concerning additional legislation which may be needed to eliminate those unsafe or unsound practices.

(Pub. L. 91-598, § 15, formerly § 11, Dec. 30, 1970, 84 Stat. 1655, renumbered and amended Pub. L. 95-283, §§ 9, 14, May 21, 1978, 92 Stat. 260, 270.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-283, § 14(c), redesignated former subsec. (c) as (b). Former subsec. (b), relating to application of securities investor protection provisions to foreign members, was struck out.

Subsec. (c). Pub. L. 95-283, § 14(a), (c), redesignated former subsec. (d) as (c) and, as so redesignated, added, ", officers, or employees" following "Directors" in the subsec. catchline and the text. Former subsec. (c) was redesignated as (b).

Subsec. (d). Pub. L. 95-283, § 14(b), (c), redesignated former subsec. (e) as (d) and, as so redesignated, added provisions authorizing SIPC to prescribe necessary and proper minimal requirements for providing public notice of membership by a member of SIPC in SIPC, and struck out provisions authorizing rules by SIPC to implement advertising requirements. Former subsec. (d) was redesignated as (c).

Subsecs. (e) to (h). Pub. L. 95-283, § 14(c), redesignated former subsecs. (e) to (h) as (d) to (g), respectively.

§ 78*lll*. Definitions

For purposes of this chapter including the application of the Bankruptcy Act [11 U.S.C. 1 et seq.] to a liquidation proceeding:

(1) Bankruptcy act

The term "Bankruptcy Act" means, except where the context indicates otherwise, those provisions of the Bankruptcy Act relating to ordinary bankruptcy (chapters I through VII [11 U.S.C. 1 et seq., 11 et seq., 21 et seq., 41 et seq., 61 et seq., 91 et seq., and 101 et seq.]) as now in effect or as amended from time to time, and includes the rules of bankruptcy procedure promulgated with respect to such provisions, but does not include the provisions of section 60e of the Bankruptcy Act [11 U.S.C. 96(e)], relating to stockbroker bankruptcies.

(2) Commission

The term "Commission" means the Securities and Exchange Commission.

(3) Customer

The term "customer" of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer. The term "customer" includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities, but does not include—

(A) any person to the extent that the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

(B) any person to the extent that such person has a claim for cash or securitites which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.

(4) Customer name securities

The term "customer name securities" means securities which were held for the account of a customer on the filing date by or on behalf of the debtor and which on the filing date were registered in the name of the customer, or were in the process of being so registered pursuant to instructions from the debtor, but does not include securities registered in the name of the customer which, by endorsement or otherwise, were in negotiable form.

(5) Customer property

The term "customer property" means cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted. The term "customer property" includes—

(A) securities held as property of the debtor to the extent that the inability of the debtor to meet its obligations to customers for their net equity claims based on securities of the same class and series of an issuer is attributable to the debtor's noncompliance with the requirements of section 78o(c)(3) of this title and the rules prescribed under such section;

(B) resources provided through the use or realization of customers' debit cash balances and other customer-related debit items as defined by the Commission by rule;

(C) any cash or securities apportioned to customer property pursuant to section 78fff(d) of this title; and

(D) any other property of the debtor which, upon compliance with applicable laws, rules, and regulations, would have been set aside or held for the benefit of customers, unless the trustee determines that including such property within the meaning of such term would not significantly increase customer property.

(6) Debtor

The term "debtor" means a member of SIPC with respect to whom an application for a protective decree has been filed under section 78eee(a)(3) of this title or a direct payment procedure has been instituted under section 78fff-4(b) of this title.

(7) Examining authority

The term "examining authority" means, with respect to any member of SIPC (A) the self-regulatory organization which inspects or examines such member of SIPC, or (B) the Commission if such member of SIPC is not a member of or participant in any self-regulatory organization or if the Commission has designated itself examining authority for such member pursuant to section 78iii(c) of this title.

(8) Filing date

The term "filing date" means the date on which an application for a protective decree is filed under section 78eee(a)(3) of this title except that—

(A) if a petition was filed before such date by or against the debtor under the Bankruptcy Act [11 U.S.C. 1 et seq.] or under chapter X [11 U.S.C. 501 et seq.] or XI [11 U.S.C. 701 et seq.] of such Act, as now in effect or as amended from time to time, the term "filing date" means the date on which such petition was filed;

(B) if the debtor is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term "filing date" means the date on which such proceeding was commenced; or

(C) if the debtor is the subject of a direct payment procedure or was the subject of a direct payment procedure discontinued by SIPC pursuant to section 78fff-4(f) of this title the term "filing date" means the date on which notice of such direct payment procedure was published under section 78fff-4(b) of this title.

(9) Foreign subsidiary

The term "foreign subsidiary" means any subsidiary of a member of SIPC which has its principal place of business in a foreign country or which is organized under the laws of a foreign country.

(10) Gross revenues from the securities business

The term "gross revenues from the securities business" means the sum of (but without duplication)—

(A) commissions earned in connection with transactions in securities effected for customers as agent (net of commissions paid to other brokers and dealers in connection with such transactions) and markups with respect to purchases or sales of securities as principal;

(B) charges for executing or clearing transactions in securities for other brokers and dealers;

(C) the net realized gain, if any, from principal transactions in securities in trading accounts;

(D) the net profit, if any, from the management of or participation in the underwriting or distribution of securities;

(E) interest earned on customers' securities accounts;

(F) fees for investment advisory services (except when rendered to one or more registered investment companies or insurance company separate accounts) or account supervision with respect to securities;

(G) fees for the solicitation of proxies with respect to, or tenders or exchanges of, securities;

(H) income from service charges or other surcharges with respect to securities;

(I) except as otherwise provided by rule of the Commission, dividends and interest received on securities in investment accounts of the broker or dealer;

(J) fees in connection with put, call, and other option transactions in securities;

(K) commissions earned from transactions in (i) certificates of deposit, and (ii) Treasury bills, bankers acceptances, or commercial paper which have a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited, except that SIPC shall by bylaw include in the aggregate of gross revenues only an appropriate percentage of such commissions based on SIPC's loss experience with respect to such instruments over at least the preceding five years; and

(L) fees and other income from such other categories of the securities business as SIPC shall provide by bylaw.

Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

(11) Liquidation proceeding

The term "liquidation proceeding" means any proceeding for the liquidation of a debtor under this chapter in which a trustee has been appointed under section 78eee(b)(3) of this title.

(12) Net equity

The term "net equity" means the dollar amount of the account or accounts of a customer, to be determined by—

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or pur-

chase on the filing date, all securities positions of such customer (other than customer name securities reclaimed by such customer); minus

(B) any indebtedness of such customer to the debtor on the filing date; plus

(C) any payment by such customer of such indebtedness to the debtor which is made with the approval of the trustee and within such period as the trustee may determine (but in no event more than sixty days after the publication of notice under section 78fff-2(a) of this title).

In determining net equity under this paragraph, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers.

(13) Persons registered as brokers or dealers

The term "persons registered as brokers or dealers" includes any person who is a member of a national securities exchange.

(14) Protective decree

The term "protective decree" means a decree, issued by a court upon application of SIPC under section 78eee(a)(3) of this title, that the customers of a member of SIPC are in need of the protection provided under this chapter.

(15) Security

The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, any collateral trust certificate, preorganization certificate or subscription, transferable share, voting trust certificate, certificate of deposit, certificate of deposit for a security, any investment contract or certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or mineral royalty or lease (if such investment contract or interest is the subject of a registration statement with the Commission pursuant to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.]), any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase or sell any of the foregoing, and any other instrument commonly known as a security. The term "security" does not include any currency, or any commodity or related contract or futures contract, or any warrant or right to subscribe to or purchase or sell any of the foregoing.

(Pub. L. 91-598, § 16, formerly § 12, Dec. 30, 1970, 84 Stat. 1656, renumbered and amended Pub. L. 95-283, §§ 9, 15, May 21, 1978, 92 Stat. 260, 271.)

AMENDMENT OF SECTION

Pub. L. 95-598, title III, § 308(o), title IV, § 402(a), Nov. 6, 1978, 92 Stat. 2676, 2682, provided that, effective Oct. 1, 1979, this section is amended to read as follows:

For purposes of this chapter, including the application of the Bankruptcy Act to a liquidation proceeding:

(1) Commission

The term "Commission" means the Securities and Exchange Commission.

(2) Customer

The term "customer" of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer. The term "customer" includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities, but does not include—

(A) any person to the extent that the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

(B) any person to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.

(3) Customer name securities

The term "customer name securities" means securities which were held for the account of a customer on the filing date by or on behalf of the debtor and which on the filing date were registered in the name of the customer, or were in the process of being so registered pursuant to instructions from the debtor, but does not include securities registered in the name of the customer which, by endorsement or otherwise, were in negotiable form.

(4) Customer property

The term "customer property" means cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted. The term "customer property" includes—

(A) securities held as property of the debtor to the extent that the inability of the debtor to meet its obligations to customers for their net equity claims based on securities of the same class and series of an issuer is attributable to the debtor's noncompliance with the requirements of section 78o(c)(3) of this title and the rules prescribed under such section;

(B) resources provided through the use or realization of customers' debit cash balances and other customer-related debit items as defined by the Commission by rule;

(C) any cash or securities apportioned to customer property pursuant to section 78fff(d) of this title; and

(D) any other property of the debtor which, upon compliance with applicable laws, rules, and regulations, would have been set aside or held for the benefit of customers, unless the trustee determines that including such property within the meaning of such term would not significantly increase customer property.

(5) Debtor

The term "debtor" means a member of SIPC with respect to whom an application for a protective decree has been filed under section 78eee(a)(3) of this title or a direct payment procedure has been instituted under section 78fff–4(b) of this title.

(6) Examining authority

The term "examining authority" means, with respect to any member of SIPC (A) the self-regulatory organization which inspects or examines such member of SIPC, or (B) the Commission if such member of SIPC is not a member of or participant in any self-regulatory organization or if the Commission has designated itself examining authority for such member pursuant to section 78iii(c) of this title.

(7) Filing date

The term "filing date" means the date on which an application for a protective decree is filed under section 78eee(a)(3) of this title, except that—

(A) if a petition under title 11 concerning the debtor was filed before such date, the term "filing date" means the date on which such petition was filed;

(B) if the debtor is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term "filing date" means the date on which such proceeding was commenced; or

(C) if the debtor is the subject of a direct payment procedure or was the subject of a direct payment procedure discontinued by SIPC pursuant to section 78fff–4(f) of this title, the term "filing date" means the date on which notice of such direct payment procedure was published under section 78fff–4(b) of this title.

(8) Foreign subsidiary

The term "foreign subsidiary" means any subsidiary of a member of SIPC which has its principal place of business in a foreign country or which is organized under the laws of a foreign country.

(9) Gross revenues from the securities business

The term "gross revenues from the securities business" means the sum of (but without duplication)—

(A) commissions earned in connection with transactions in securities effected for customers as agent (net of commissions paid to other brokers and dealers in connection with such transactions) and mark-ups with respect to purchases or sales of securities as principal;

(B) charges for executing or clearing transactions in securities for other brokers and dealers;

(C) the net realized gain, if any, from principal transactions in securities in trading accounts;

(D) the net profit, if any, from the management of or participation in the underwriting or distribution of securities;

(E) interest earned on customers' securities accounts;

(F) fees for investment advisory services (except when rendered to one or more registered investment companies or insurance company separate accounts) or account supervision with respect to securities;

(G) fees for the solicitation of proxies with respect to, or tenders or exchanges of, securities;

(H) income from service charges or other surcharges with respect to securities;

(I) except as otherwise provided by rule of the Commission, dividends and interest received on securities in investment accounts of the broker or dealer;

(J) fees in connection with put, call, and other option transactions in securities;

(K) commissions earned from transactions in (i) certificates of deposit, and (ii) Treasury bills, bankers acceptances, or commercial paper which have a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited, except that SIPC shall by bylaw include in the aggregate of gross revenues only an appropriate percentage of such commissions based on SIPC's loss experience with respect to such instruments over at least the preceding five years; and

(L) fees and other income from such other categories of the securities business as SIPC shall provide by bylaw.

Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

(10) Liquidation proceeding

The term "liquidation proceeding" means any proceeding for the liquidation of a debtor under this chapter in which a trustee has been appointed under section 78eee(b)(3) of this title.

(11) Net equity

The term "net equity" means the dollar amount of the account or accounts of a customer, to be determined by—

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date, all securities positions of such customer (other than customer name securities reclaimed by such customer); minus

(B) any indebtedness of such customer to the debtor on the filing date; plus

(C) any payment by such customer of such indebtedness to the debtor which is made with the approval of the trustee and within such period as the trustee may determine (but in no event more than sixty days after the publication of notice under section 78fff-2(a) of this title).

In determining net equity under this paragraph, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers.

(12) Persons registered as brokers or dealers

The term "persons registered as brokers or dealers" includes any person who is a member of a national securities exchange.

(13) Protective decree

The term "protective decree" means a decree, issued by a court upon application of SIPC under section 78eee(a)(3) of this title, that the customers of a member of SIPC are in need of the protection provided under this chapter.

(14) Security

The term "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, any collateral trust certificate, preorganization certificate or subscription, transferable share, voting trust certificate, certificate of deposit, certificate of deposit for a security, any investment contract or certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or mineral royalty or lease (if such investment contract or interest is the subject of a registration statement with the Commission pursuant to the provisions of the Securities Act of 1933), any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase or sell any of the foregoing, and any other instrument commonly known as a security. The term "security" does not include any currency, or any commodity or related contract or futures contract, or any warrant or right to subscribe to or purchase or sell any of the foregoing.

REFERENCES IN TEXT

This chapter, referred to in provision preceding par. (1), and in pars. (11) and (14), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Bankruptcy Act, referred to in provision preceding par. (1), and in pars. (1) and (8)(A), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended. Chapters I through VII and X and XI of the Bankruptcy are classified generally to chapters 1 (§ 1 et seq.), 2 (§ 11 et seq.), 3 (§ 21 et seq.), 4 (§ 41 et seq.), 5 (§ 61 et seq.), 6 (§ 91 et seq.), 7 (§ 101 et seq.), 10 (§ 501 et seq.), and 11 (§ 701 et seq.) of Title 11, Bankruptcy. For complete classification of this Act to the Code, see Tables.

The rules of bankruptcy procedure, referred to in par. (1), are set out in the Appendix to Title 11, Bankruptcy.

Section 60e of the Bankruptcy Act, referred to in subsec. (a), probably means section 60(e) of such act which is classified to section 96(e) of Title 11, Bankruptcy.

The Securities Act of 1933, referred to in par. (15), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1978—Pub. L. 95-283 in introductory material added requirement for applicability of terms to a liquidation proceeding involving the Bankruptcy Act, in par. (1) in the catchline substituted "Bankruptcy Act" for "Self-regulatory organization", and substituted provisions defining such terms, in par. (2) in the catchline substituted "Commission" for "Financial responsibility rules", and substituted provisions defining such terms, in par. (3) in the catchline substituted "Customer" for "Examining authority", and substituted provisions defining such terms, and added pars. (4) to (15).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78ccc, 78fff, 78fff-4 of this title.

CHAPTER 2C—PUBLIC UTILITY HOLDING COMPANIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 77ccc, 77hhh, 77jjj, 77kkk, 77www, 77zzz, 78u, 80a-2, 80a-3, 80a-37, 80a-49, 80b-2 of this title; title 16 sections 824a-3, 825d, 825q; title 29 sections 306, 432.

§ 79k. Simplification of holding company systems

[*See main edition for text of (a) to (e)*]

(f) Commission as trustee; submission of reorganization plan by Commission or interested party

In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court may constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed, and in any such proceeding the court shall not appoint any person other than the Commission as trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. In no proceeding under this section or otherwise shall the Commission be appointed as trustee or receiver without its express consent. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid,

in connection with any reorganization, dissolution, liquidation, case under Title 11, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission.

[*See main edition for text of (g)*]

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 309, 92 Stat. 2676.)

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-598 substituted "case under title 11" for "bankruptcy".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 79*l*. Intercompany and other transactions relating to registered companies

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

CHAPTER 2D—INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER I—INVESTMENT COMPANIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 77c, 78c, 78m, 78n, 78o, 78s, 78u, 80b-2, 80b-3, 80b-5, 687, 687b of this title; title 12 section 1843; title 26 sections 265, 368, 851, 852, 856, 1246, 4975; title 29 sections 306, 432, 1001, 1002, 1101; title 43 section 1625; title 49 section 11301.

§ 80a-2. Definitions

(a) When used in this subchapter, unless the context otherwise requires—

[*See main edition for text of (1) to (7)*]

(8) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

[*See main edition for text of (9) to (45); (b)*]

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 310(a), 92 Stat. 2676.)

AMENDMENTS

1978—Subsec. (a)(8). Pub. L. 95-598 substituted "a case under title 11" for "bankruptcy".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598 set out as Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-13, 80a-15, 80a-31 of this title; title 11 section 107; title 26 sections 72, 265, 368, 401.

§ 80a-3. Definition of investment company

[*See main edition for text of (a) and (b)*]

(c) Further exemptions

Notwithstanding subsection (a) of this section, none of the following persons is an investment company within the meaning of this subchapter:

[*See main edition for text of (1) to (6)*]

(7) Any company (A) which is subject to regulation under section 11302 of title 49, except that this exception shall not apply to a company which the Commission finds and by order declares to be primarily engaged, directly or indirectly, in the business of investing, reinvesting, owning, holding, or trading in securities, or (B) whose entire outstanding stock is owned or controlled by a company excepted under clause (A) hereof, if the assets of the controlled company consist substantially of securities issued by companies which are subject to regulation under section 11302 of title 49.

[*See main edition for text of (8) to (13)*]

CODIFICATION

In subsec. (c)(7), "section 11302 of title 49" was substituted for "section 314 of title 49" on authority of section 3(b) of Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

§ 80a-6. Exemptions

(a) Exemption of specified investment companies

The following investment companies are exempt from the provisions of this subchapter:

[*See main edition for text of (1)*]

(2) Any company for which, in a proceeding in any court of the United States or of a State, a receiver, trustee in a case under title 11, or similar officer had been appointed or elected prior to the effective date of this subchapter, and every such officer so appointed or elected prior to the effective date of this subchapter; but such exemption shall continue only so long as (A) the conduct of such company's business remains subject to the supervision of such court or officer thereof, and (B) such company does not sell exclusively for cash any security of which it is the issuer, except short-term paper and ordinary receiver's or trustee's certificates.

[*See main edition for text of (3) to (5); (b) to (e)*]

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 310(b), 92 Stat. 2676.)

REFERENCES IN TEXT

Federal savings and loan association, referred to in subsec. (a)(4), deemed also a reference to Federal mutual savings bank, see section 1462 of Title 12, Banks and Banking.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-598 substituted "a case under title 11" for "bankruptcy".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 80a-25. Reorganization plans; reports by Commission

[*See main edition for text of* (a) *to* (c)]

(d) Application of section to reorganizations under title 11

Nothing contained in this section shall in any way affect or derogate from the powers of the courts of the United States and the Commission with reference to reorganizations contained in title 11.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 310(c), 92 Stat. 2676.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-598 substituted "title 11" for "the Bankruptcy Act of 1898, as amended".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SUBCHAPTER II—INVESTMENT ADVISERS

§ 80b-2. Definitions

(a) When used in this subchapter, unless the context otherwise requires—

[*See main edition for text of* (1) *to* (4)]

(5) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11, or similar official, or any liquidating agent for any of the foregoing, in his capacity as such.

[*See main edition for text of* (6) *to* (21); (b)]

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 311, 92 Stat. 2676.)

AMENDMENTS

1978—Subsec. (a)(5). Pub. L. 95-598 substituted "a case under title 11" for "bankruptcy".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 4—CHINA TRADE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 26 sections 246, 992, 1504, 6072, 6091.

CHAPTER 5—THE BUREAU OF FOREIGN AND DOMESTIC COMMERCE

§ 176a. Confidential nature of information furnished Bureau

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6274.

CHAPTER 7—THE BUREAU OF STANDARDS

§ 278b. Working Capital Fund

(a) Utilization

The National Bureau of Standards is authorized to utilize in the performance of its functions the Working Capital Fund established by the Act of June 29, 1950 (64 Stat. 275).

[*See main edition for text of* (b) *to* (f)]

(As amended July 21, 1978, Pub. L. 95-322, § 2(a), 92 Stat. 395.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-322 struck out ", and additional amounts as from time to time may be required for the purposes of said fund are authorized to be appropriated" following "(64 Stat. 275)".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 278h of this title.

§ 278f. Fire Research Center

(a) Establishment; programs of research; functions of Secretary; dissemination of information

There is hereby established within the Department of Commerce a Fire Research Center which shall have the mission of performing and supporting research on all aspects of fire with the aim of providing scientific and technical knowledge applicable to the prevention and control of fires. The content and priorities of the research program shall be determined in consultation with the Administrator of the United States Fire Administration. In implementing this section, the Secretary is authorized to conduct, directly or through contracts or grants, a fire research program, including—

(1) basic and applied fire research for the purpose of arriving at an understanding of the fundamental processes underlying all aspects of fire. Such research shall include scientific investigations of—

[*See main edition for text of* (A) *to* (F)]

(G) design concepts for providing increased fire safety consistent with habitability, comfort, and human impact in buildings and other structures;

(H) such other aspects of the fire process as may be deemed useful in pursuing the objectives of the fire research program; and

(I) methods, procedures, and equipment for arson prevention, detection, and investigation;

[*See main edition for text of* (2), (3), *and closing par.*]

(b) Authorization of appropriations

For purposes of this section, there are authorized to be appropriated not to exceed

$1,275,000 for the transitional fiscal quarter of July 1, 1976, through September 30, 1976, not to exceed $5,500,000 for the fiscal year ending September 30, 1977, not to exceed $6,000,000 for the fiscal year ending September 30, 1978, and not to exceed $5,600,000 for the fiscal year ending September 30, 1979.

(As amended Oct. 5, 1978, Pub. L. 95-422, §§ 1(b), 2(b), 3(b), 92 Stat. 932, 933.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-422, §§ 2(b), 3(b), in provisions preceding par. (1) substituted "United States Fire Administration" for "National Fire Prevention and Control Administration" and added par. (1)(I).

Subsec. (b). Pub. L. 95-422, § 1(b), added provision authorizing the appropriation of not to exceed $5,600,000 for the fiscal year ending September 30, 1979.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 278h of this title.

§ 278h. Appropriations; availability and authorization

(a) Appropriations to carry out the provisions of this chapter may remain available for obligation and expenditure for such period or periods as may be specified in the Acts making such appropriations.

(b) There are authorized to be appropriated to carry out the provisions of this chapter (including the Working Capital Fund referred to in section 278b(a) of this title), except section 278f of this title, such sums as may be necessary for each of the fiscal years 1979 and 1980.

(As amended July 21, 1978, Pub. L. 95-322, § 2(b), 92 Stat. 395.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act" meaning act Mar. 3, 1901, ch. 872, which comprises all sections of this chapter other than sections 279 to 282.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-322, § 2(b)(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 95-322, § 2(b)(2), added subsec. (b).

§ 280. Apprentices; promotion

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

CHAPTER 7A—STANDARD REFERENCE DATA PROGRAM

§ 290e. United States copyright and renewal rights

(a) Notwithstanding the limitations contained in section 105 of title 17, the Secretary may secure copyright and renewal thereof on behalf of the United States as author or proprietor in all or any part of any standard reference data which he prepares or makes available under this chapter, and may authorize the reproduction and publication thereof by others.

[*See main edition for text of* (b)]

(As amended Pub. L. 94-553, § 105(f), Oct. 19, 1976, 90 Stat. 2599.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-553 substituted "section 105 of title 17" for "section 8 of title 17".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-553 effective Jan. 1, 1978, see section 102 of Pub. L. 94-553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

CHAPTER 9—THE NATIONAL WEATHER SERVICE

CROSS REFERENCES

National Climate Program, establishment, contract and grant authority, etc., see section 2901 et seq. of this title.

§ 322. Odd jobs for part-time employees

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

CHAPTER 9A—WEATHER MODIFICATION ACTIVITIES OR ATTEMPTS: REPORTING REQUIREMENT

CROSS REFERENCES

National Climate Program, establishment, contract and grant authority, etc., see section 2901 et seq. of this title.

CHAPTER 14A—AID TO SMALL BUSINESS

Sec.
637b. Availability of information [New].
637c. Definitions [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 662, 687 of this title; title 12 section 371; title 16 section 472a; title 19 sections 2345, 2346; title 50 App. section 2017*l*.

§ 631. Declaration of policy

[*See main edition for text of* (a) *and* (b)]

(c) Use of assistance programs to establish, preserve, and strengthen small business concerns

(1) The assistance programs authorized by sections 636(i) and 636(j) of this title are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

(2)(A) With respect to the programs authorized by section 636(j) of this title, the Congress finds—

(i) that ownership and control of productive capital is concentrated in the economy of the United States and certain groups, therefore, own and control little productive capital;

(ii) that certain groups in the United States own and control little productive capital because they have limited opportunities for small business ownership;

(iii) that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States;

(iv) that such development of business ownership among groups that presently own and control little productive capital will be greatly facilitated through the creation of a small business ownership development program, which shall provide services, including, but not limited to, financial, management, and technical assistance.

(v) that the power to let sole source Federal contracts pursuant to section 637(a) of this title can be an effective procurement assistance tool for development of business ownership among groups that own and control little productive capital; and

(vi) that the procurement authority under section 637(a) of this title shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

(B) It is, therefore, the purpose of the programs authorized by section 636(j) of this title to—

(i) foster business ownership by individuals in groups that own and control little productive capital; and

(ii) promote the competitive viability of such firms by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.

[*See main edition for text of* (d)]

(e)(1) with respect to the Administration's business development programs the Congress finds—

(A) that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy;

(B) that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(C) that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, and other minorities;

(D) that it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

(E) that such conditions can be improved by providing the maximum practicable opportunity for the development of small business concerns owned by members of socially and economically disadvantaged groups;

(F) that such development can be materially advanced through the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from such concerns; and

(G) that such procurements also benefit the United States by encouraging the expansion of suppliers for such procurements, thereby encouraging competition among such suppliers and promoting economy in such procurements.

(2) It is, therefore, the purpose of section 637(a) of this title to—

(A) foster business ownership by individuals who are both socially and economically disadvantaged;

(B) promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary; and

(C) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

(As amended Pub. L. 95-507, title II, §§ 201, 203, Oct. 24, 1978, 92 Stat. 1760, 1763.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-507, § 203, designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 95-507, § 201, added subsec. (e).

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-315, § 1, July 4, 1978, 92 Stat. 377, provided: "That this Act [amending sections 633, 636, and 639 of this title and provisions set out as notes under this section] may be cited as the 'Small Business Energy Loan Act'."

AUTHORIZATION OF APPROPRIATIONS

Section 2[20] of Pub. L. 85-536, as amended by Pub. L. 87-341, § 11(h)(2), Oct. 3, 1961, 75 Stat. 757; Pub. L. 95-89, title I, § 102, Aug. 4, 1977, 91 Stat. 553; Pub. L. 95-315, §§ 5, 7, July 4, 1978, 92 Stat. 379, provided that:

"(a) There are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act [this chapter] other than those for which appropriations are specifically authorized.

"(b) The following program levels are authorized for fiscal year 1978:

"(1) For the programs authorized by section 7(a) of this Act [section 636(a) of this title], the Administration is authorized to make $400,000,000 in direct loans, $15,000,000 in immediate participation loans, and $3,000,000,000 in deferred participation loans.

"(2) For the programs authorized by section 7(h) of this Act [section 636(h) of this title], the Administration is authorized to make $30,000,000 in direct and immediate participation loans and $20,000,000 in guaranteed loans.

"(3) For the programs authorized by section 7(i) of this Act [section 636(i) of this title], the Administration is authorized to make $60,000,000 in direct and

immediate participation loans and $81,000,000 in guaranteed loans.

"(4) For the programs authorized by sections 501 and 502 of the Small Business Investment Act of 1958 [sections 695 and 696 of this title], the Administration is authorized to make $45,000,000 in direct and immediate participation loans and $41,000,000 in guaranteed loans.

"(5) For the programs authorized by title III of the Small Business Investment Act of 1958 [subchapter III of chapter 14B of this title], the Administration is authorized to make $20,000,000 in direct purchase of debentures and preferred securities and to make $180,000,000 in guarantees of debentures.

"(6) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958 [part B of subchapter IV-A of chapter 14B of this title], the Administration is authorized to enter into guarantees not to exceed $2,000,000,000.

"(7) For the programs authorized by sections 7(b)(3), 7(b)(4), 7(b)(5), 7(b)(6), 7(b)(7), 7(b)(8), 7(b)(9), and 7(g) of this Act [section 636(b)(3) to (9) and (g) of this title], the Administration is authorized to enter into $300,000,000 in loans, guarantees, and other obligations or commitments.

"(8) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958 [sections 694-1 and 694-2 of this title], the Administration is authorized to enter into guarantees not to exceed $150,000,000.

"(9) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, except for administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act [section 636(b)(1) and (2) of this title].

"(c) There are authorized to be appropriated to the Administration for fiscal year 1978, $1,400,000,000 to carry out the programs referred to in subsection (b), paragraphs (1) through (9). Of such sum, $47,100,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958 [section 694c of this title], $4,000,000 shall be available for the purpose of carrying out the provisions of section 403 of the Small Business Investment Act of 1958 [section 694 of this title], and $171,000,000 shall be available for salaries and expenses of the Administration, of which amount—

"(1) $13,000,000 shall be available for procurement assistance, with priority given to developing a small business procurement source data bank and to employing additional procurement officers to increase the number and total value of set-asides, including those under section 8(a) of this Act [section 637(a) of this title];

"(2) $32,000,000 shall be available for management and technical assistance, with priority given to development of effective training programs and counseling services, development of small business development centers and development of an effective small business technology transfer program;

"(3) $6,000,000 shall be available for research and advocacy, with priority given to developing a small business economic data base, evaluating the required resources for a major small business economic research and analysis unit in the Administration, undertaking such economic research and analysis, representing the interests of small business within the Federal Government, and developing a small business ombudsman function to help solve small business problems that are caused by programs, regulations, or general activities of the Federal Government and of which no more than $60,000 can be used for the payment of travel and transportation of persons for the national, regional, and Small Business Investment Companies advisory council meetings;

"(4) $4,000,000 shall be available for the office of minority small business; and

"(5) $3,900,000 shall be available for data management with priority given to more effective and efficient utilization of existing data management resources of the Administration.

"(d) The Administrator may transfer no more than 10 percent of program levels for salaries and expenses authorized in paragraphs (1) through (5) of section 20(c) of this Act [pars. (1) through (5) of subsec. (c) of this note]: *Provided, however,* That no program level authorized in such paragraphs may be increased more than 20 percent by any such transfers.

"(e) The following program levels are authorized for fiscal year 1979:

"(1) For the programs authorized by section 7(a) of this Act [section 636(a) of this title], the Administration is authorized to make $440,000,000 in direct loans, $17,000,000 in immediate participation loans, and $3,300,000,000 in deferred participation loans.

"(2) For the programs authorized by section 7(h) of this Act [section 636(h) of this title], the Administration is authorized to make $33,000,000 in direct and immediate participation loans and $22,000,000 in guaranteed loans.

"(3) For the programs authorized by section 7(i) of this Act [section 636(i) of this title], the Administration is authorized to make $66,000,000 in direct and immediate participation loans and $89,000,000 in guaranteed loans.

"(4) For the programs authorized by sections 501 and 502 of the Small Business Investment Act of 1958 [sections 695 and 696 of this title], the Administration is authorized to make $49,000,000 in direct and immediate participation loans and $45,000,000 in guaranteed loans.

"(5) For the programs authorized by title III of the Small Business Investment Act of 1958 [subchapter III of chapter 14B of this title], the Administration is authorized to make $22,000,000 in direct purchase of debentures and preferred securities and to make $198,000,000 in guarantees of debentures.

"(6) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958 [part B of subchapter IV-A of chapter 14B of this title], the Administration is authorized to enter into guarantees not to exceed $2,200,000,000.

"(7) For the programs authorized by sections 7(b)(3), 7(b)(4), 7(b)(5), 7(b)(6), 7(b)(7), 7(b)(8), 7(b)(9), and 7(g) of this Act [section 636(b)(3) to (9) and (g) of this title], the Administration is authorized to enter into $330,000,000 in loans, guarantees, and other obligations or commitments.

"(8) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958 [sections 694-1 and 694-2 of this title], the Administration is authorized to enter into guarantees not to exceed $300,000,000.

"(9) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, except for administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act [section 636(b)(1) and (2) of this title].

(10) For the programs authorized by section 7(*l*) of this Act [section 636*l* of this title], the Administration is authorized to make $30,000,000 in direct and immediate participation loans and $45,000,000 in guaranteed loans.

"(f) There are authorized to be appropriated to the Administration for fiscal year 1979, $1,601,750,000 to carry out the programs referred to in subsection (e), paragraphs (1) through (10). Of such sum, $52,100,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958 [section 694c of this title], $4,400,000 shall be available for the purpose of carrying out the provisions of section 403 of the Small Business Investment Act of 1958 [section 694 of this title], and $188,000,000 shall be available for salaries and expenses of the Administration, of which amount—

"(1) $14,300,000 shall be available for procurement assistance, with priority given to developing a small business procurement source data bank and to em-

ploying additional procurement officers to increase the number and total value of set-asides, including those under section 8(a) of this Act [section 637(a) of this title];

"(2) $35,200,000 shall be available for management and technical assistance, with priority given to development of effective training programs and counseling services, development of small business development centers, and development of an effective small business technology transfer program;

"(3) $6,600,000 shall be available for research and advocacy, with priority given to developing a small business economic data base, evaluating the required resources for a major small business economic research and analysis unit in the Administration, undertaking such economic research and analysis, representing the interests of small business within the Federal Government, and developing a small business ombudsman function to help solve small business problems that are caused by programs, regulations, or general activities of the Federal Government and of which no more that [than] $66,000 can be used for the payment of travel and transportation of persons for the national, regional, and Small Business Investment Companies advisory council meetings;

"(4) $4,400,000 shall be available for the office of minority small business; and

"(5) $4,290,000 shall be available for data management with priority given to more effective and efficient utilization of existing data management resources of the Administration.

"(g) The Administrator may transfer no more than 10 percent of program levels for salaries and expenses authorized in paragraphs (1) through (5) of section 20(f) of this Act [pars. (1) through (5) of subsec. (f) of this note]: *Provided, however,* That no program level authorized in such paragraphs may be increased more than 20 percent by any such transfers."

TERMINATION OF ADVISORY COUNCILS

Advisory Councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory Councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 11625. NATIONAL PROGRAM FOR MINORITY BUSINESS ENTERPRISE

Ex. Ord. No. 11625, Oct. 13, 1971, 36 F.R. 19967, as amended by Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, provided:

[See main edition for text of first three pars., and sec. 1]

SEC. 2. [Revoked by Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839.]

[See main edition for text of secs. 3 to 8]

ADVISORY COUNCIL FOR MINORITY ENTERPRISE

For provisions relating to termination of, see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of the Federal Advisory Committee Act, set out in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 12061. SMALL BUSINESS CONFERENCE COMMISSION

Ex. Ord. No. 12061, May 18, 1978, 43 F.R. 21865, as amended by Ex. Ord. No. 12091, Nov. 1, 1978, 43 F.R. 51373, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to create in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) an advisory committee on a White House Small Business Conference, it is hereby ordered as follows:

1-1. ESTABLISHMENT OF COMMISSION

1-101. There is established a Small Business Conference Commission. The Commission shall be composed of eleven members.

1-102. The members of the Commission shall be appointed by the President. The President shall designate a Chairman from among the members.

1-2. FUNCTIONS OF THE COMMISSION

1-201. The Commission shall provide advice with respect to the holding of a White House Conference on Small Business to be held in early 1980.

1-202. The Commission shall recommend issues to be considered by the Conference, including those relating to fostering of small business and the expansion of opportunities for entry into small business enterprises.

1-203. The Commission shall recommend candidates for delegates to the Conference. It shall seek the majority of representatives from those engaged in small business activity, but shall also include others interested in small business concerns, such as government regulators, financiers, public interest and academic representatives.

1-204. Prior to the White House Conference on Small Business, the Administrator of the Small Business Administration shall hold open regional and local meetings or conferences. These open meetings shall seek to identify the specific issues which should be addressed at the Conference and shall solicit candidates for Conference delegates. The Commission shall review the issues addressed at these regional and local meetings.

1-205. The Commission shall make periodic recommendations to the President and the Administrator of the Small Business Administration, and shall offer such other advice at such times as the Administrator may request.

1-3. ADMINISTRATIVE PROVISIONS

1-301. The Commission may request any Executive agency to furnish such information as may be useful in fulfilling the Commission's functions. Each such agency is authorized, to the extent permitted by law and within the limits of available funds, to furnish such information to the Commission.

1-302. Each member of the Commission who is not otherwise employed by the Federal Government shall receive no compensation from the United States by virtue of their service on the Commission, but all members may receive transportation and travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

1-303. All necessary administrative staff services, support, facilities, and expenses of the Commission shall, to the extent permitted by law, be furnished by the Small Business Administration.

1-4. GENERAL PROVISIONS

1-401. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.), except that of reporting annually to the Congress, which are applicable to the Commission shall be per-

formed by the Administrator of the Small Business Administration in accordance with guidelines and procedures established by the Administrator of General Services.

1-402. The Commission shall terminate on April 30, 1980, or 60 days after the conclusion of the White House Conference on Small Business, whichever is sooner.

JIMMY CARTER.

§ 632. Definition of small-business concern

(a) For the purposes of this chapter, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, agriculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this chapter, the maximum number of employees which a small-business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

(b) For purposes of this chapter, any reference to an agency or department of the United States, and the term "Federal agency", shall have the meaning given the term "agency" by section 551(1) of title 5, but does not include the United States Postal Service or the General Accounting Office.

(As amended Pub. L. 95-507, title II, § 224(b), Oct. 24, 1978, 92 Stat. 1772.)

AMENDMENTS

1978—Pub. L. 95-507 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 637 of this title; title 12 section 3013.

§ 633. Small Business Administration

[See main edition for text of (a)]

(b) Appointment of Administrator, Deputy Administrator, and Associate Administrators

The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small-business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carrying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents. The Administrator is authorized to appoint a Deputy Administrator and four Associate Administrators (including the Associate Administrator specified in section 671 of this title) to assist in the execution of the functions vested in the Administration. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development and shall be responsible to the Administrator for the formulation of policy relating to the Administration's programs which provide assistance to minority small business concerns and in the review of the Administration's execution of such programs in light of such policy. The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

(c) Revolving funds; disaster loan fund; business loan and investment fund; payments into funds; appropriations; reports to Congress; business-type budgets; interest on disbursements

(1) There are established in the Treasury the following revolving funds: (A) a disaster loan fund which shall be available for financing functions performed under sections 634(e), 636(b)(1), 636(b)(2), 636(b)(3), 636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), 636(c)(2), and 636(g) of this title; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 636 (a), 636(e), 636(h), 636(i), 636(*l*) and 637(a) of this title, and titles III [15 U.S.C. 681 et seq.] and V [15 U.S.C. 695 et seq.] of the Small Business Investment Act of 1958.

(2) All repayments of loans and debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administration (A) pursuant to sections 634(e), 636(b)(1), 636(b)(2), 636(b)(3), 636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), 636(c)(2), and 636(g) of this title, shall be paid into a disaster loan fund; and (B) pursuant to sections 636(a), 636(e), 636(h), 636(i), 636(*l*) and 637(a) of this title, and titles III [15 U.S.C. 681 et seq.] and V [15 U.S.C. 695 et seq.] of the Small Business Investment Act of 1958, shall be paid into the business loan and investment fund.

(3) Unexpended balances of appropriations made to the fund pursuant to this subsection, as in effect immediately prior to the effective date of this paragraph, shall be allocated, together with related assets and liabilities, to the funds established by paragraph (1) in such amounts as the Administrator shall determine.

(4) The Administration shall submit to the Committees on Appropriations, Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, as soon as possible after the beginning of each calendar quarter, a full and complete report on the status of each of the funds established by paragraph (1). Business-type budgets for each of the funds established by

paragraph (1) shall be prepared, transmitted to the Committees on Appropriations, the Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, and considered, and enacted in the manner prescribed by law (sections 847, 848, and 849 of title 31) for wholly owned Government corporations.

(5) The Administration shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest on the outstanding cash disbursements from each of the funds established by paragraph (1) at rates determined by the Secretary of the Treasury, taking into consideration the current average yields on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities as calculated for the month of September preceding such fiscal year.

[*See main edition for text of (d)*]

(As amended Pub. L. 95–14, §§ 1–3, Mar. 24, 1977, 91 Stat. 25; Pub. L. 95–89, title I, § 101(a)–(c), title II, §§ 201, 202, title III, § 304, title IV, § 401, Aug. 4, 1977, 91 Stat. 553, 557, 559; Pub. L. 95–315, § 4, July 4, 1978, 92 Stat. 379; Pub. L. 95–507, title II, § 206, Oct. 24, 1978, 92 Stat. 1766.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–507 substituted "Associate Administrator for Minority Small Business and Capital Ownership Development" for "Associate Administrator for Minority Small Business".

Subsec. (c)(1)(B). Pub. L. 95–315, § 4(1), added reference to section 636(*l*) of this title.

Subsec. (c)(2)(B). Pub. L. 95–315, § 4(2), added reference to section 636(*l*) of this title.

1977—Subsec. (c)(1). Pub. L. 95–89, §§ 101(a), 304, 401(1), deleted end text from cls. (A) and (B) reading ", including administrative expenses in connection with such functions"; inserted in cl. (A) reference to section 634(e); and inserted in cl. (A) and deleted from cl. (B) reference to section 636(b)(3).

Subsec. (c)(2). Pub. L. 95–89, §§ 201, 304, 401(2), inserted in cl. (A) reference to section 636(g); inserted in cl. (A) reference to section 634(e); and inserted in cl. (A) and deleted from cl. (B) reference to section 636(b)(3).

Subsec. (c)(3). Pub. L. 95–89, § 101(b), deleted last sentence authorization of appropriations of capital for the funds in amounts necessary to carry out the functions of the Administration to remain available until expended.

Subsec. (c)(4). Pub. L. 95–89, §§ 101(c), 202, repealed provisions of par. (4) which limited the total amount of loans, guarantees, and other obligations, to be outstanding at any one time: under sections 636(a), (b)(3), (e), (h), (i) and 637(a) of this title to $7,400,000,000; under title III of the Small Business Investment Act of 1958 to $887,500,000; under title V of the Small Business Investment Act of 1958 to $525,000,000; and under section 636(i) of this title to $525,000,000; redesignated former par. (5) as (4) and substituted reference to submission of reports to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives for the prior reference the Committees on Banking and Currency of the Senate and House of Representatives; substituted reference to transmission of business-type budgets to the Committees on Appropriations, the Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives for prior reference to such transmission to the Congress; and deleted the second sentence providing that if at the close of the preceding calendar quarter the aggregate amount outstanding or committed by the Administration in carrying out its functions under the sections or titles referred to in former par. (4) exceeded 75 per centum of the total amount authorized to be outstanding under such sections or titles, the Administration's report shall include its recommendations for such additional authority as it deems appropriate.

Pub. L. 95–14 substituted "$7,400,000,000" for "$6,000,000,000", "$525,000,000" for "$450,000,000", and "$887,500,000" for "$725,000,000".

Subsec. (c)(5). Pub. L. 95–89, § 202, redesignated former par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (c)(6). Pub. L. 95–89, § 202, redesignated former par. (6) as (5).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 106 of Pub. L. 95–89 provided that: "This title [amending sections 633, 636, 694, 694–2, and 694c of this title and provisions set out as a note under section 631 of this title] shall become effective on October 1, 1977."

OFFICE OF INSPECTOR GENERAL

All the functions, powers, and duties of the Office of Audits and Investigations in the Small Business Administration were transferred to the Office of Inspector General in the Small Business Administration, as established by Pub. L. 95–452, § 2, Oct. 12, 1978, 92 Stat. 1101, set out in the Appendix to Title 5, Government Organization and Employees. See section 9(a)(1)(K) of Pub. L. 95–452 set out in the Appendix to Title 5.

§ 634. General powers

[*See main edition for text of (a) and (b)*]

(c) Procurement of experts and consultants; compensation and expenses

To such extent as he finds necessary to carry out the provisions of this chapter, the Administrator is authorized to procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil-service and classification laws and, except in the case of stenographic reporting services by organizations, without regard to section 5 of title 41. Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5.

[*See main edition for text of (d)*]

(e) Undertaking or suspension of payment obligation; period; extension of maturity; repayment agreement; "required payments" defined

(1) Subject to the requirements and conditions contained in this subsection, upon application by a small business concern which is the recipient of a loan made under this chapter, the Administration may undertake the small business concern's obligation to make the required payments under such loan or may suspend such obligation if the loan was a direct loan made by the Administration. While such payments are being made by the Administration pursuant to

the undertaking of such obligation or while such obligation is suspended, no such payment with respect to the loan may be required from the small business concern.

(2) The Administration may undertake or suspend for a period of not to exceed 5 years any small business concern's obligation under this subsection only if—

(A) without such undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administration, become insolvent or remain insolvent;

(B) with the undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administration, become or remain a viable small business entity; and

(C) the small business concern executes an agreement in writing satisfactory to the Administration as provided by paragraph (4).

(3) Notwithstanding the provisions of sections 636(a)(4)(C) and 636(i)(1) of this title, the Administration may extend the maturity of any loan on which the Administration undertakes or suspends the obligation pursuant to this subsection for a corresponding period of time.

(4)(A) Prior to the undertaking or suspension by the Administration of any small business concern's obligation under this subsection, the Administration, consistent with the purposes sought to be achieved herein, shall require the small business concern to agree in writing to repay to it the aggregate amount of the payments which were required under the loan during the period for which such obligation was undertaken or suspended, either—

(i) by periodic payments not less in amount or less frequently falling due than those which were due under the loan during such period, or

(ii) pursuant to a repayment schedule agreed upon by the Administration and the small business concern, or

(iii) by a combination of the payments described in clause (i) and clause (ii).

(B) In addition to requiring the small business concern to execute the agreement described in subparagraph (A), the Administration shall, prior to the undertaking or suspension of the obligation, take such action, and require the small business concern to take such action as the Administration deems appropriate in the circumstances, including the provision of such security as the Administration deems necessary or appropriate to insure that the rights and interests of the lender (Small Business Administration or participant) will be safeguarded adequately during and after the period in which such obligation is so undertaken or suspended.

(5) The term "required payments" with respect to any loan means payments of principal and interest under the loan.

(As amended Pub. L. 95-89, title III, § 303, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95-510, § 103, Oct. 24, 1978, 92 Stat. 1781.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-510 substituted "Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of Title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of Title 5" for "Any individual so employed may be compensated at a rate not in excess of $50 per diem, and, while such individual is away from his home or regular place of business, he may be allowed transportation and not to exceed $15 per diem in lieu of subsistence and other expenses".

1977—Subsec. (e). Pub. L. 95-89 added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 105 of Pub. L. 95-510 provided that: "This Act [which amended sections 634, 636, and 637 of this title and repealed sections 5031, 5032, and 5083 of Title 42, Public Health and Welfare] shall be effective October 1, 1979."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 633, 693 of this title.

§ 636. Additional powers

(a) Loans to small-business concerns; restrictions and limitations

The Administration is empowered to make loans to enable small-business concerns, or small-business concerns 100 percent owned and controlled by an Indian tribe as defined in section 450b(a) of title 25, to finance plant construction, conversion, or expansion, including the acquisition of land; or to finance residential or commercial construction or rehabilitation for sale: *Provided, however,* That such loans shall not be used primarily for the acquisition of land; or to finance the acquisition of equipment, facilities, machinery, supplies, or materials; or to supply such concerns with working capital to be used in the manufacture of articles, equipment, supplies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy; and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis. The foregoing powers shall be subject, however, to the following restrictions and limitations:

[*See main edition for text of (1) to (7)*]

(8) Repealed. Pub. L. 95-89, title I, § 101(d), Aug. 4, 1977, 91 Stat. 553.

(b) Disaster loans; term; suspension of principal and interest payments; rate of interest

The Administration also is empowered—

[*See main edition for text of (1)*]

(2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to any small business concern located in an area affected by a disaster, if the Administration determines that the concern has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

[*See main edition for text of (A)*]

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1961); or

(C) a disaster, as determined by the Administrator of the Small Business Administration pursuant to the Disaster Relief Act of 1970; or

(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that small business concerns (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Upon receipt of such certification, the Administration may then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

(E) Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made under this paragraph in connection with a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 percent on the amount of such loan not exceeding $25,000.

(3) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in continuing in business at its existing location, in reestablishing its business, in purchasing a business, or in establishing a new business, if the Administration determines that such concern has suffered substantial economic injury as the result of its displacement by, or location in, adjacent to, or near, a program or project constructed by or with funds provided in whole or in part by the Federal Government or by a program or project by a State or local government or public service entity, providing such government or public service entity has the authority to exercise the right of eminent domain on such program or project; and the purpose of a loan made pursuant to such project or program may, in the discretion of the Administration, include the purchase or construction of other premises whether or not the borrower owned the premises occupied by the business; and

[*See main edition for text of (4)*]

(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in its plant, facilities, or methods of operation to meet requirements imposed on such concern pursuant to any Federal law heretofore or hereafter enacted, any State law enacted in conformity therewith, or any regulation or order of a duly authorized, Federal, State, regional, or local agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph: *Provided*, That the maximum loan made to any small business concern under this paragraph shall not exceed the maximum loan which, under rules or regulations prescribed by the Administration, may be made to any business enterprise under paragraph (1) of this subsection; and

[*See main edition for text of (6)*]

(7) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in continuing in business at its existing location, in reestablishing its business, in purchasing a new business, or in establishing a new business if the Administration determines that such concern has suffered or will suffer substantial economic injury as the result of the closing by the Federal Government of a major military installation under the jurisdiction of the Department of Defense, or as a result of a severe reduction in the scope and size of operations at a major military installation;

(8) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist, or refinance the existing indebtedness of, any small business concern seriously and adversely affected by a shortage of fuel, electrical energy, or energy-producing resources, or by a shortage of raw or processed materials resulting from such shortages, if the Administration determines that such concern has suffered or is likely to suffer substantial economic injury without assistance under this paragraph; and

(9) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary to assist, or refinance the existing indebtedness of, any small business concern located in an area of economic dislocation. The Governor of a State may certify to the Administration (A) that small business concerns within the State have suffered substantial economic injury as a result of an economic dislocation, and (B) that such concerns are in need of financial assistance which is not available on reasonable terms. For the purposes of this paragraph, economic dislocation includes extraordinary, severe, and temporary natural conditions or other economic dislocations as determined by the Administration. Such economic dislocations must be of such magnitude that without the benefit of loans provided hereunder a significant number of otherwise

financially sound small businesses in the impacted regions or business sectors would either become insolvent or be unable to return quickly to their former level of operation. No loan made hereunder shall exceed $100,000, nor shall the proceeds thereof be used to reduce the exposure of any other lender. The Administration shall permit deferral of payment of principal and interests for one year on loans made hereunder.

No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: *Provided,* That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further,* That the provisions of paragraph (1) of subsection (c) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding the provisions of any other law, the interest rate on the Administration's share of any loan made under this subsection shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum: *Provided, however,* That the interest rate for loans made under paragraphs (1) and (2) hereof shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement. Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made pursuant to paragraph (1) of this subsection to repair or replace a primary residence and/or replace or repair damaged or destroyed personal property, less the amount of compensation by insurance or otherwise, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be: 1 per centum on the amount of such loan not exceeding $10,000, and 3 per centum on the amount of such loan over $10,000 but not exceeding $40,000. The interest rate on the Administration's share of the first $250,000 of all other loans made pursuant to paragraph (1) of this subsection, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 per centum. All repayments of principal on the Administration's share of any loan made under the above provisions shall first be applied to reduce the principal sum of such loan which bears interest at the lower rates provided in this paragraph. The principal amount of any loan made pursuant to paragraph (1) in connection with a disaster which occurs on or after April 1, 1977, but prior to January 1, 1978, may be increased by such amount, but not more than $2,000, as the Administration determines to be reasonable in light of the amount and nature of loss, damage, or injury sustained in order to finance the installation of insulation in the property which was lost, damaged, or injured, if the uninsured, damaged portion of the property is 10 per centum or more of the market value of the property at the time of the disaster. Not later than June 1, 1978, the Administration shall prepare and transmit to the Select Committee on Small Business of the Senate, the Committee on Small Business of the House of Representatives, and the Committees of the Senate and House of Representatives having jurisdiction over measures relating to energy conservation, a report on its activities under this paragraph, including therein an evaluation of the effect of such activities on encouraging the installation of insulation in property which is repaired or replaced after a disaster which is subject to this paragraph, and its recommendations with respect to the continuation, modification, or termination of such activities.

[See main edition for text of second to fourth unnumbered paragraphs; (c)]

(d) Grants for studies, research, and counseling concerning the managing, financing, and operation of small-business enterprises; study and research recommendations; conditions; seminars

(1) The Administration also is empowered to make grants to any State government or any agency thereof, any State-chartered development credit or finance corporation, any land-grant college or university, any college or school of business, engineering, commerce, or agriculture, or to any corporation formed by two or more of the entities hereinabove described which are eligible to receive such grants, for studies, research, and counseling concerning the managing, financing, and operation of small business enterprises and technical and statistical information necessary thereto in order to carry out the purposes of section 637(b)(1) of this title by coordinating such information with existing information facilities within the State and by making such information available to State and local agencies. The Administrator may recommend to grant applicants particular studies or research which are to be financed by such grants. The total of all grants (including amendments and modifications thereof) made under this subsection within any one State in any one year shall not exceed $40,000. The Administration may require, as a condition to any grant (or amendment or modification thereof) made under this subsection, that an additional amount not exceeding the amount of such grant be provided from sources other than the Administration to assist in carrying out the purposes for which such grant is made: *Provided,* That if such grant or any part thereof is to be utilized for

the purpose of providing counseling services to individual small business enterprises the Administration shall require that such additional amount be provided and in an amount which is equal to the amount of such grant. What constitutes such additional amount may be defined by the Administration.

(2) The Administration is authorized to hold seminars throughout the Nation to make potential applicants aware of the opportunities available under this subsection and related government energy programs, and to make grants to qualified organizations to provide training seminars for small business concerns regarding practical and easily implemented methods for design, manufacture, installation, and servicing of equipment and for providing services listed in paragraph (1) of this subsection, except that recipients of loans made pursuant to this subsection shall not subsequently be eligible for such grants.

[*See main edition for text of (e) and (f)*]

(g) Loans to small business concerns for water pollution control facilities

[*See main edition for text of (1) to (3)*]

(4) Repealed. Pub. L. 95–89, title I, § 101(e), Aug. 4, 1977, 91 Stat. 553.

[*See main edition for text of (h) and (i)*]

(j) Financial assistance for projects providing technical or management assistance; areas of high concentration of unemployment or low-income; preferences; manner and method of payment; accessible services; program evaluations; establishment of development program; coordination of policies

(1) The Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under subsection (i) of this section, paragraph (10) of this subsection; and section 637(a) of this title, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 637(a) of this title.

(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under subsection (i) of this section; paragraph (10) of this subsection, and section 637(a) of this title;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 637(a) of this title. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under subsections (i) and (j) of this section, and section 637(a) of this title.

(A) An advisory committee composed of five high-level officers from five United States businesses and five representatives of minority small businesses shall be created to facilitate the achievement of the purposes of this paragraph. The members of the advisory committee shall be appointed by the President. The chairman of the advisory committee, who shall be designated by the President shall report annually to the President and to the Congress on the activities of the advisory committee.

(B) The General Accounting Office shall evaluate the activities taken by the Administration to achieve the purpose of this paragraph and evaluate the success of these activities in achieving the purposes of this paragraph. The General Accounting Office shall report to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General, on the findings of this evaluation and shall make recommendations on actions needed to improve the Administration's performance pursuant to this paragraph.

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 637(a) of this title.

(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(8) The General Accounting Office shall provide for an independent and continuing evalua-

tion of programs under subsections (i) and (j) of this section and section 637(a) of this title, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Comptroller General shall be reported to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General.

(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of subsections (i) and (j) of this section and section 637(a) of this title.

(10) There is established within the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 637(a) of this title. The management of the Program shall be vested in the Associate Administrator for Minority Small Business and Capital Ownership Development who shall also manage all other services and activities authorized under this subsection and section 637(a) of this title.

(A) The Program shall—

(i) assist small business concerns participating in the Program to develop comprehensive business plans with specific business targets, objectives, and goals;

(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financial counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

(v) analyze and report the causes of success and failure of small business concerns participating in the Program; and

(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (I) the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958 [15 U.S.C. 694(a) et seq.].

(B) Small business concerns eligible to receive contracts pursuant to section 637(a) of this title shall participate in the Program.

(C) No small business concern shall receive a contract pursuant to section 637(a) of this title unless the Program is able to provide such small business concern with, but not limited to, such management, technical, and financial services as may be necessary to promote the competitive viability of the small business concern within a reasonable period of time.

(11) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under subsection (i) of this section and small business concerns eligible to receive contracts pursuant to section 637(a) of this title.

(k) Functions relating to loans and financial assistance for projects providing technical or management assistance to individuals or enterprises eligible for assistance as small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals

In carrying out its functions under subsections (i) and (j) of this section and section 637(a) of this title, the Administration is authorized—

[*See main edition for text of (1) to (3)*]

(4) to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including traveltime; and to allcw them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for perosns in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually.

(l) Loans to small business concerns for solar energy and energy conservation measures

(1) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administrator may determine to be necessary or appropriate to assist any small business concern in financing plant construction, conversion, expansion (including acquisition of land for such a plant), or startup, and the acquisition of equipment, facilities, machinery, supplies, or materials to

enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service any of the following energy measures:

(A) Solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types.

(B) Photovoltaic cells and related equipment.

(C) A product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures List of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection.

(D) Equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy.

(E) Equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste.

(F) Hydroelectric power equipment.

(G) Wind energy conversion equipment.

(H) Engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in subparagraphs (A) through (G).

Proceeds of loans under this subsection shall not be used primarily for research and development.

(2) No loan shall be made under this subsection if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this chapter would exceed $500,000. No loan made or effected under this subsection directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000.

(3) No financial assistance shall be extended pursuant to this subsection unless the financial assistance applied for is not otherwise available on reasonable terms from non-Federal sources.

(4) No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no loan may be made unless it is shown that a participation is not available.

(5) In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

(6) The Administration's share of any loan made under this subsection shall bear interest at the same rate as loans made under subsection (a) of this section. The maximum terms of any such loan, including extensions and renewals, may not exceed fifteen years.

(7) All loans made under this subsection shall be of such sound value as reasonably to assure repayment, recognizing that greater risk may be associated with loans made to business concerns in this field: *Provided*, That factors in determining "sound value" shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further*, That such status need not be as sound as that required for loans under subsection (a) of this section.

(8)(A) The Administration, after consultation with the Department of Energy and other Federal departments and agencies as the Administrator deems appropriate, shall publish in the Federal Register for public comment not later than sixty days after July 4, 1978, proposed regulations to carry out the provisions of this subsection. The Administration shall make all reasonable efforts to solicit comments from small businesses and shall take into consideration comments submitted regarding such proposed regulations.

(B) The administration shall publish final regulations under this subsection not later than one hundred and eighty days after July 4, 1978.

(9) It is the intent of Congress that the paperwork burden and regulatory impact on applicants under this subsection shall be minimized, and that to the maximum extent practicable, the Administrator may rely upon consultation with the Department of Energy and other agencies, upon paid consultants, and upon voluntary public submissions of information to obtain market data, industry sales projections, energy savings, and other economic information needed to carry out the provisions of paragraph (1)(D) and (E). Nothing in this subsection shall be construed as precluding the Administrator from using any of his lawful powers to obtain information from applicants.

(As amended Pub. L. 95–89, title I, § 101(d), (e), title III, §§ 301, 302, title IV, §§ 402–405, Aug. 4, 1977, 91 Stat. 553, 558–560; Pub. L. 95–315, §§ 2, 3, July 4, 1978, 92 Stat. 377, 378; Pub. L. 95–507, title II, §§ 204, 205, 231, Oct. 24, 1978, 92 Stat. 1764, 1766, 1772; Pub. L. 95–510, § 104, Oct. 24, 1978, 92 Stat. 1782.)

REFERENCES IN TEXT

The Consolidated Farm and Rural Development Act (7 U.S.C. 1961), referred to in subsec. (b)(2)(B), was in the original the "Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961)", Pub. L. 87–128, title III, Aug. 8, 1961, 75 Stat. 307, which was redesignated the Consolidated Farm and Rural Development Act by Pub. L. 92–419, § 101, Aug. 30, 1972, 86 Stat. 657. The Consolidated Farm and Rural Development Act is classified generally to chapter 50 (§ 1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Disaster Relief Act of 1970, referred to in subsec. (b)(2)(C), is Pub. L. 91–606, Dec. 31, 1970, 84 Stat. 1744, as amended, which was classified principally to chapter 58 (§ 4401 et seq.) of Title 42, The Public Health and Welfare. The 1970 Act was repealed in part by the Disaster Relief Act of 1974, Pub. L. 93–288, title VI, § 603, May 22, 1974, 88 Stat. 164, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42. Section 602(m) of the Disaster Relief Act of 1974 provided that a reference in any other law to repealed provisions of the Disaster Relief Act of 1970 shall be

deemed to be a reference to the appropriate provision of the 1974 Act.

The Small Business Investment Act of 1958, referred to in subsec. (j)(10)(A)(vi), in Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended. Title IV, part B of the Small Business Investment Act of 1958 is classified generally to part B (§ 694(a) et seq.) of subchapter IV-A of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-507, § 231, adding provision including small-business concerns totally owned and controlled by Indian tribes within the scope of this section.

Subsec. (d). Pub. L. 95-315, § 3, designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 95-507, § 204, included individuals and enterprises eligible for assistance under par. (10) of this subsection and section 637(a) of this title among those eligible for assistance under this section, provided for the establishment of the small business and capital ownership development program, and provided for the coordination of certain Federal policies under this section by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Subsec. (k). Pub. L. 95-507, § 205, inserted "and section 637(a) of this section" following "subsections (i) and (j) of this section".

Subsec. (k)(4). Pub. L. 95-510 substituted "the daily equivalent of the highest rate payable under section 5332 of title 5" for "$100 per diem".

Subsec. (*l*). Pub. L. 95-315, § 2, added subsec. (*l*).

1977—Subsec. (a). Pub. L. 95-89, § 301, authorized loans to finance residential or commercial construction or rehabilitation for sale, subject to restriction that such loans be not used primarily for the acquisition of land.

Subsec. (a)(8). Pub. L. 95-89, § 101(d), repealed par. (8) provisions which required the Administrator to make direct loans under subsec. (a) in an aggregate amount of not less than $400,000,000 during fiscal year ending June 30, 1975.

Subsec. (b)(2)(C) to (E). Pub. L. 95-89, § 403, added subpars. (C) to (E).

Subsec. (b)(3). Pub. L. 95-89, § 402, substituted "program or project constructed by or with funds provided in whole or in part by the Federal Government or by a program or project by a State or local government or public service entity, providing such government or public service entity has the authority to exercise the right of eminent domain on such program or project" for "federally aided urban renewal program or a highway project or any other construction constructed by or with funds provided in whole or in part by the Federal Government".

Subsec. (b)(5). Pub. L. 95-89, § 302, inserted "heretofore or hereafter enacted" following "any Federal law".

Subsec. (b)(9). Pub. L. 95-89, § 404, added par. (9).

Subsec. (b), foll. par. (9). Pub. L. 95-89, § 405, added provisions respecting interest rate on loans to repair or replace primary residence and/or replace or repair damaged or destroyed personal property, including installation of insulation in connection with any disaster occurring on or after April 1, 1977, and transmission of a report to congressinal committees respecting the activities under the provisions and the encouragement of such insulation installations.

Subsec. (g)(4). Pub. L. 95-89, § 101(e), repealed par. (4) provision which authorized appropriation of not to exceed $800,000,000 to the disaster fund solely for purpose of carrying out subsec. (g) loans to small business concerns for water pollution control facilities.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-510 effective Oct. 1, 1979, see section 105 of Pub. L. 95-510, set out as an Effective Date of 1978 Amendment note under section 634 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Repeal of subsecs. (a)(8) and (g)(4) by section 101(d), (e) of Pub. L. 95-89 effective on Oct. 1, 1977, see section 106 of Pub. L. 95-89, set out as an Effective Date of 1977 Amendment note under section 633 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 633, 634, 636a, 637, 639, 644 of this title; title 19 section 2345; title 33 section 701n; title 42 section 3142-1.

§ 636a. Small business disaster loans

EFFECTIVE DATE

Section effective Apr. 1, 1970, see section 304 of Pub. L. 91-606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

§§ 636b, 636c

EFFECTIVE DATE

Sections effective Dec. 31, 1970, see section 304 of Pub. L. 91-606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

§ 636d. Disaster aid to major sources of employment

EFFECTIVE DATE

Section effective Aug. 1, 1969, see section 304 of Pub. L. 91-606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

§ 637. Additional powers

(a) Procurement contracts; subcontracts to disadvantaged small business concerns; performance bonds; contract negotiations; definitions; eligibility; determinations; publication; recruitment; construction subcontracts; annual estimates

(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall

be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator;

(B) to enter into contracts with such agency, as shall be designated by the President within 60 days after the effective date of this paragraph, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract: and

(C) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts.

No contract may be entered into under subparagraph (B) after September 30, 1980.

(2) Notwithstanding subsections (a) and (c) of section 270(a) of title 40, no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958 [15 U.S.C. 692 et seq.]; and

(D) the small business is determined to be a start-up concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

This paragraph shall not apply after September 30, 1980.

(3) Any small business concern selected by the Administration to perform any Federal Government procurement contract to be let pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(4) For purposes of this section, the term "socially and economically disadvantaged small business concern" means any small business concern—

(A) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(B) whose management and daily business operations are controlled by one or more of such individuals.

(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(6) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.

(7) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

(8) All determinations made pursuant to paragraphs (4), (5), (6) and (7), shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development.

(9) Within ninety days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth those conditions or circumstances pursuant to which a firm previously deemed eligible by the Administration may be denied assistance under the provisions of this subsection: *Provided*, That no such firm shall be denied total participation in any program conducted under the authority of this subsection without first being afforded a hearing on the record in accordance with chapter 5 of title 5.

(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection.

(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

(12) To the maximum extent practicable the Associate Administrator for Minority Small Business and Capital Ownership Development shall submit, no less frequently than annually, a yearly estimate of the dollar amounts and types of contracts required for the efficient use of any program conducted under the authority of this subsection, to each agency which may participate in such program.

(b) Procurement and property disposal powers; determination of small-business concerns

It shall also be the duty of the Administration and it is empowered, whenever it determines such action is necessary—

(1) [*See main edition for text of (A)*]

(B) To establish, conduct, and publicize, and to recruit, select, and train volunteers for (and to enter into contracts, grants, or cooperative agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executive (ACE) for the purposes of subparagraph (A); and to facilitate the implementation of such volunteer programs the Administration may maintain at its headquarters and pay the expenses of a team of volunteers subject to such conditions and limitations as the Administration deems appropriate: *Provided*, That any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(C) To allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (A) and (B) to use the Administration's office facilities and related material and services as the Administration deems appropriate, including clerical and stenographic services:

(i) such volunteers, while carrying out activities under this paragraph shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28; and for the purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS-11 employee;

(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this chapter, or in connection with attendance at meetings sponsored by the Administration, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, for individuals serving without pay; and

(iii) such volunteers shall in no way provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to this paragraph shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

(E) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings arising directly out of the performance of activities pursuant to this paragraph, to which volunteers have been made parties.

(F) In carrying out its functions under this paragraph, the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and, further, to accept gratuitous services and facilities.

[*See main edition for text of (2) to (6)*]

(7)(A) To certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer en-

gaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

(B) If a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) of title 41, he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

(C) In any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility.

[*See main edition for text of (8) to (15); (c)*]

(d) Performance of contracts by small business concerns; inclusion of required contract clause; subcontracting plans; contract eligibility; incentives; breach of contract; review; report to Congress

(1) It is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

(A) does not exceed $10,000;

(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(C) is for services which are personal in nature.

(3) The clause required by paragraph (2) shall be as follows:

"(A) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

"(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor's compliance with this clause.

"(C) As used in this contract, the term 'small business concern' shall mean a small business as defined pursuant to section 3 of the Small Business Act [15 U.S.C. 632] and relevant regulations promulgated pursuant thereto. The term 'small business concern owned and controlled by socially and economically disadvantaged individuals' shall mean a small business concern—

"(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

"(ii) whose management and daily business operations are controlled by one or more of such individuals.

"The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act [15 U.S.C. 637(a)].

"(D) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals."

(4)(A) Each solicitation of an offer for a contract to be let by a Federal agency which is to be awarded pursuant to the negotiated method of procurement and which may exceed $1,000,000, in the case of a contract for the construction of any public facility, or $500,000, in the case of all other contracts, shall contain a clause notifying potential offering companies of the provisions of this subsection relating to contracts awarded pursuant to the negotiated method of procurement.

(B) Before the award of any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded, or was let, pursuant to the negotiated method of procurement,

(ii) is required to include the clause stated in paragraph (3),

(iii) may exceed $1,000,000 in the case of a contract for the construction of any public facility, or $500,000 in the case of all other contracts, and

(iv) which offers subcontracting possibilities,

the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan which incorporates the information prescribed in paragraph (6). The subcontracting

plan shall be included in and made a material part of the contract.

(C) If, within the time limit prescribed in regulations of the Federal agency concerned, the apparent successful offeror fails to negotiate the subcontracting plan required by this paragraph, such offeror shall become ineligible to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract.

(D) No contract shall be awarded to any offeror unless the procurement authority determines that the plan to be negotiated by the offeror pursuant to this paragraph provides the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of the contract.

(E) Notwithstanding any other provision of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the contract: *Provided*, That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

(5)(A) Each solicitation of a bid for any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded pursuant to the formal advertising method of procurement,

(ii) is required to contain the clause stated in paragraph (3) of this subsection,

(iii) may exceed $1,000,000 in the case of a contract for the construction of any public facility, or $500,000, in the case of all other contracts, and

(iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a subcontracting plan which incorporates the information prescribed in paragraph (6).

(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

(A) percentage goals for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(B) the name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

(C) a description of the efforts the offeror or bidder will take to assure that small business concerns and small business concerns owned and controlled by the socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

(D) assurances that the offeror or bidder will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1,000,000 in the case of a contract for the construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan similar to the plan required under paragraph (4) or (5);

(E) assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

(F) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns.

(7) The provisions of paragraphs (4), (5), and (6) shall not apply to offerors or bidders who are small business concerns.

(8) The failure of any contractor or subcontractor to comply in good faith with—

(A) the clause contained in paragraph (3) of this subsection, or

(B) any plan required of such contractor pursuant to the authority of this subsection to be included in its contrac or subcontract,

shall be a material breach of such contract or subcontract.

(9) Nothing contained in this subsection shall be construed to supersede the requirements of Defense Manpower Policy Number 4A (32A CFR Chap. 1) or any successor policy.

(10) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—

(A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to

determine the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and

(C) evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case contractors having multiple contracts, on an aggregate basis.

(11) At the conclusion of each fiscal year, the Administration shall submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which the Administration determines do not contain maximum practicable opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts described in this subsection.

[*See main edition for text of* (e)]

(As amended Pub. L. 95–89, title V, § 501, Aug. 4, 1977, 91 Stat. 561; Pub. L. 95–507, title II, §§ 202(a), 211, Oct. 24, 1978, 92 Stat. 1761, 1767; Pub. L. 95–510, § 101, Oct. 24, 1978, 92 Stat. 1780.)

REFERENCES IN TEXT

The effective date of this paragraph, referred to in subsec. (a)(1)(B), (9), probably means the effective date of Pub. L. 95–507, which was approved Oct. 24, 1978.

The Federal tort claims provisions in Title 28, referred to in subsec. (b)(1)(C)(i), are classified to section 1346(b) and chapter 171 (§ 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

The Small Business Investment Act of 1958, referred to in subsec. (a)(2)(C), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended. Title IV of the Small Business Investment Act of 1958 is classified generally to subchapter IV–A (§ 692 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–507, § 202(a), redesignated former subsec. (a)(1) and (2) as (a)(1)(A) and (C) and as redesignated added provision giving the Administration sole discretion in choosing procurement requirements from agencies or departments for use in the program, provided that the terms and conditions of the proposed contract are to be negotiated, made provision for the submission of stalemated matters for resolution, and added subsec. (a)(1)(B); and added subsecs. (2) to (12).

Subsec. (b)(1). Pub. L. 95–510 substituted in subpar. (B) provisions relating to the establishment and implementation of volunteer programs for provisions relating to the use of office facilities etc., and the payment of transportation expenses and per diem allowances and added subpars. (C) to (F).

Subsec. (d). Pub. L. 95–507, § 211, substituted provisions relating to the performance of contracts by small business concerns, requiring, among other things, the inclusion of a specific contract clause in most Federal prime contracts, requiring as a condition of the solicitation of any offer of a Federal contract in excess of $500,000, the submission of a summary contract plan, and relating to incentives for small business subcontracting, contract eligibility, breach of contract or subcontract, administrative review of contract solicitation and subcontract planning, and relating to submission to congressional committees of a report on subcontracting plans for provisions relating generally to the small business subcontract program and regulations issued thereunder.

1977—Subsec. (b)(7). Pub. L. 95–89, in revising par. (7), incorporated existing introductory text in provisions designated subpar. (A) and substituted therein "with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract" for "with respect to the competency, as to capacity and credit, of any small-business concern or group of such concerns to perform a specific Government contract"; added subpar. (B); and incorporated existing end text in provisions designated subpar. (C), substituting therein "certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract" for "certified by or under the authority of the Administration to be a competent Government contractor with respect to capacity and credit as to a specific Government contract" and "shall let" and "other requirement of responsibility or eligibility" for "are authorized to let" and "other requirement with respect to capacity and credit".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1)(B) by Pub. L. 95–510 effective Oct. 1, 1979, see section 105 of Pub. L. 95–510, set out as an Effective Date of 1978 Amendment note under section 634 of this title.

GENERAL ACCOUNTING OFFICE REPORT TO CONGRESS ON BUSINESS DEVELOPMENT

Section 202(b) of Pub. L. 95–507 provided that: "Not later than June 30, 1980, the General Accounting Office shall submit to the Congress a report which, with respect to provisions of paragraphs (1)(B) and (2) of section 8(a) of the Small Business Act, [subsec. (a)(1)(B) and (2) of this section] shall evaluate the implementation of such provisions and whether such implementation furthered the purposes under section 2(c) of the Small Business Act [section 631(c) of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 633, 634d, 636, 644 of this title; title 42 sections 2985a, 5059.

§ 637b. Availability of information

(a) For any contract to be let by any Federal agency, such agency shall provide to any small business concern upon its request—

(1) a copy of bid sets and specifications with respect to such contract;

(2) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and

(3) adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract.

(b) Subsection (a) of this section shall not apply to any contract or subcontract under such contract which—

(1) will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(2) is for services which are personal in nature.

(Pub. L. 95-507, title II, § 223, Oct. 24, 1978, 92 Stat. 1772.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

CROSS REFERENCES

Purchases and contracts for property, small business concerns, see section 252 of Title 41, Public Contracts.

§ 637c. Definitions

For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Small Business Administration;

(2) the term "Federal agency" has the meaning given the term "agency" by section 551(1) of title 5, but does not include the United States Postal Service or the General Accounting Office; and

(3) the term "Government procurement contract" means any contract for the procurement of any goods or services by any Federal agency.

(Pub. L. 95-507, title II, § 224(a), Oct. 24, 1978, 92 Stat. 1772.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 95-507, Oct. 24, 1978, 92 Stat. 1757. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§ 639. Reporting requirements and agency cooperation

(a) Annual reports to President and Congressional officers and committees

The Administration shall, as soon as practicable each fiscal year make a comprehensive annual report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives. Such report shall include a description of the state of small business in the Nation and the several States, and a description of the operations of the Administration under this chapter, including, but not limited to, the general lending, disaster relief, Government regulation relief, procurement and property disposal, research and development, technical assistance, dissemination of data and information, and other functions under the jurisdiction of the Administration during the previous fiscal year. Such report shall contain recommendations for strengthening or improving such programs, or, when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs. In addition, such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved. With respect to minority small business concerns, the report shall include the proportion of loans and other assistance under this chapter provided to such concerns, the goals of the Administration for the next fiscal year with respect to such concerns, and recommendations for improving assistance to minority small business concerns under this chapter.

(b) Report of expenditures in conduct of activities; additional contents; assistance of Department of Energy

The Administration shall make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business and to the Committee on Small Business of the House of Representatives, as soon as practicable each fiscal year, showing as accurately as possible for each such period the amount of funds appropriated to it that it has expended in the conduct of each of its principal activities such as lending, procurement, contracting, and providing technical and managerial aids. Such report shall contain the number and amount of loans, the number of applications, the total amount applied for, and the number and amount of defaults for each type of equipment or service for which loans are authorized by this subsection, and on the projected and actual energy savings and numbers of jobs created by firms through loans made under section 636(*l*) of this title. The Department of Energy shall assist the Administration in obtaining information and compiling this report.

(c) Surveys for determination of factors tending to injure small business; reports and recommendations

[*See main edition for text of (1)*]

(2) The Attorney General shall submit to the Congress, the Senate Select Committee on Small Business, and the President, at such times as he deems desirable, but not less than once every year, reports setting forth the results of such surveys and including such recommendations as he may deem desirable.

(d) Monthly report of Department of Defense

For the purpose of aiding in carrying out the national policy to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, and to maintain and strengthen the overall economy of the Nation, the Department of Defense shall make a monthly report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives not less than forty-five days after the close of the month, showing the amount of funds appropriated to the Department of Defense which have been expended, obligated, or contracted to be spent with small-business concerns and the amount of such funds expended, obligated, or contracted to be spent with firms other than small business in the same fields of operation; and such monthly reports shall show separately the funds expended, obligated, or contracted to be spent for basic and applied scientific research and development.

(e) Retention of records

The Administration shall retain all correspondence, records of inquiries, memoranda, reports, books, and records, including memoranda as to all investigations conducted by or for the Administration, for a period of at least one year from the date of each thereof, and shall at all times keep the same available for inspection and examination by the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives, or their duly authorized representatives.

[See main edition for text of (f)]

(g) Annual report of employee conduct complaints received or acted upon and investigations undertaken by Administration

The Administration shall transmit, not later than December 31 of each year, to the Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives a sealed report with respect to—

(1) complaints alleging illegal conduct by employees of the Administration which were received or acted upon by the Administration during the preceding fiscal year; and

(2) investigations undertaken by the Administration, including external and internal audits and security and investigation reports.

(As amended Pub. L. 95–89, title II, §§ 203–208, 211, Aug. 4, 1977, 91 Stat. 557, 558; Pub. L. 95–315, § 6, July 4, 1978, 92 Stat. 379.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-315 added provisions requiring the report to contain number and amount of loans, applications for loans, etc.

1977—Subsec. (a). Pub. L. 95-89, §§ 203, 211, included the Senate Select Committee on Small Business as an additional recipient of the annual report and provided for the contents of the report as it relates to minority small business concerns.

Subsec. (b). Pub. L. 95-89, § 204, substituted "Committee on Small Business of the House of Representatives" for "House Select Committee to Conduct a Study and Investigation of the Problems of Small Business".

Subsec. (c)(2). Pub. L. 95-89, § 205, included the Senate Select Committee on Small Business as an additional recipient of the required reports.

Subsec. (d). Pub. L. 95-89, § 206, included the Senate Select Committee on Small Business as an additional recipient of the required reports.

Subsec. (e). Pub. L. 95-89, § 207, substituted "Committee on Small Business of the House of Representatives" for "House Select Committee To Conduct a Study and Investigation of the Problems of Small Business".

Subsec. (g). Pub. L. 95-89, § 208, substituted "Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives" for "Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking and Currency of the House of Representatives".

§ 644. Awards or contracts

(a) Determination

To effectuate the purposes of this chapter, small-business concerns within the meaning of this chapter shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this chapter shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator.

(b) Placement of contracts by contracting procurement agency

With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 694b of this title, the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c) Eligibility; report to congressional committees

During fiscal year 1978, public and private organizations and individuals eligible for assistance under section 636(h) of this title shall be eligible to participate in such contracts or any part thereof in an aggregate amount not to exceed $100,000,000: *Provided, however,* That the Administration, not later than March 1, 1979, shall prepare and transmit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives, a report on the impact of contracts awarded to such organizations and individuals on small business.

(d) Priority

For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides pursuant to Defense Manpower Policy Number 4 (32A C.F.R. Chapter 1) or any successor policy shall be authorized if the Secretary or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such defini-

tion reflects such number, the present criteria of such policy shall govern.

(e) Placement of contracts by departments, agencies, and instrumentalities of the executive branch

In carrying out labor surplus areas and small business set-aside programs, departments, agencies, and instrumentalities of the executive branch shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:

(1) Concerns which are located in labor surplus areas, and which are also small business concerns, on the basis of a total set-aside.

(2) Concerns which are small business concerns on the basis of a total set-aside.

(3) Concerns which are small business concerns, on the basis of a partial set-aside.

(4) Concerns which are located in labor surplus areas on the basis of a total set-aside.

(f) Termination

The provisions of subsections (d) and (e) of this section shall cease to be effective subsequent to September 30, 1980, unless renewed prior to such date.

(g) Goals for participation of small business concerns in procurement contracts

The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, and by small business concerns owned and controlled by socially and economically disadvantaged individuals, in procurement contracts of such agency having values of $10,000 or more. Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to perform such contracts and to perform subcontracts under such contracts. Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination.

(h) Reports to Administration; submittal of information to Congress

At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administration on the extent of participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section. The Administration shall submit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.

(i) Small business set-asides

Nothing in this chapter or any other provision of law precludes exclusive small business set-asides for procurements of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

(j) Small purchase procedures

Each contract for the procurement of goods and services which has an anticipated value of less than $10,000 and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.

(k) Office of Small and Disadvantaged Business Utilization; Director

There is hereby established in each Federal agency having procurement powers an office to known as the "Office of Small and Disadvantaged Business Utilization". The management of each such office shall be vested in an officer or employee of such agency who shall—

(1) be known as the "Director of Small and Disadvantaged Business Utilization" for such agency,

(2) be appointed by the head of such agency,

(3) be responsible only to, and report directly to, the head of such agency or to his deputy,

(4) be responsible for the implementation and execution of the functions and duties under this section and section 637 of this title which relate to such agency,

(5) have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under this section and section 637 of this title,

(6) assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity, and

(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to this section and section 637 of this title, and

(7) cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection.

This subsection shall not apply to the Administration.

(*l*) Labor surplus area procurement and manpower programs; report to Congress

(1)[1] The President shall, not later than October 1, 1979, transmit to the Select Committee on Small Business and Committee on Armed Services of the Senate and to the Committee on Small Business and the Committee on Armed Services of the House of Representatives a report on the labor surplus area procurement program under this section and the manpower policy described in subparagraph (D). Such report, together with recommendations, shall include, but not be limited to—

(A) an analysis of the effectiveness of such labor surplus area procurement program, including its effectiveness in creating jobs in the areas of high unemployment and the method by which labor markets are classified and designated as labor surplus areas;

(B) its potential benefits to Federal, State and local governments, including tax benefits, reductions in Federal payments to labor surplus areas, and reductions in State unemployment costs where such information is available;

(C) its potential costs, including its impact on the efficient utilization of Federal resources, its effect on the local economy of non-labor surplus areas, its impact on small business concerns not in labor surplus areas to the extent such information is available, and its impact on contract costs to the Federal Government; and

(D) with respect to the implementation by the Department of Defense of Defense Manpower Policy Number 4A (32A CFR Chapter 1) or any successor policy, in addition to the matters required by subparagraphs (A), (B), and (C), information concerning the impact on such matters of the expenditure of any funds which were available for procurement and which were not obligated for expenditure on September 30, 1977.

(As amended Pub. L. 95-89, title V, § 502, Aug. 4, 1977, 91 Stat. 562; Pub. L. 95-507, title II, §§ 221, 232, 233, Oct. 24, 1978, 92 Stat. 1770, 1772.)

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-507, § 232, substituted "September 30, 1980" for "September 30, 1979".

Subsecs. (g) to (k). Pub. L. 95-507, § 221, added subsecs. (g) to (k).

Subsec. (*l*). Pub. L. 95-507, § 233, added subsec. (*l*).

1977—Subsec. (a). Pub. L. 95-89 designated existing provisions as subsec. (a).

Subsecs. (b) to (f). Pub. L. 95-89 added subsecs. (b) to (f).

§ 647. Duplication of activities of other Federal departments or agencies

PROGRAMS ADMINISTERED BY THE DEPARTMENT OF COMMERCE

Pub. L. 95-507, § 207, Oct. 24, 1978, 92 Stat. 1767, provided that: "Nothing in this chapter [meaning chapter 1 of title II of Pub. L. 95-507, consisting of sections 201 to 206 of Pub. L. 95-507 which amended sections 631, 633, 636, and 637 of this title] is intended to duplicate or limit any programs or projects administered by the Department of Commerce."

[1] So in original. No par. (2) has been enacted.

CHAPTER 14B—SMALL BUSINESS INVESTMENT PROGRAM

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 77c, 77ddd, 80a-18, 633, 637, 1691c of this title; title 26 sections 243, 542, 586, 1242, 1243; title 29 section 886.

SUBCHAPTER III—SMALL BUSINESS INVESTMENT COMPANIES

§ 681. Organization

[*See main edition for text of* (a) *to* (c)]

(d) Companies financing disadvantaged persons

Notwithstanding any other provision of this chapter, a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, or formed as a limited partnership, and may be licensed by the Administration to operate under the provisions of this chapter.

(As amended Pub. L. 95-507, title I, § 104, Oct. 24, 1978, 92 Stat. 1758.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-507 authorized small business investment companies to form as limited partnerships.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 662, 682, 683, 687j of this title; title 42 sections 2985a, 5305.

§ 682. Capital requirements

(a) Amount of paid-in capital and paid-in surplus; sound and profitable operations and active and prudent management

The combined private paid-in capital and paid-in surplus of any company licensed pursuant to section 681(c) and (d) of this title shall not be less than $150,000: *Provided, however,* That the combined private paid-in capital and paid-in surplus of any company licensed on or after October 1, 1979 pursuant to section 681(c) and (d) of this title shall be not less than $500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles.

(b) Sale of shares of stock to banking organizations

Notwithstanding the provisions of section 1845(a)(1) of title 12, shares of stock in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment

companies then held by the bank would exceed 5 percent of its capital and surplus.

[*See main edition for text of* (c)]

(As amended Pub. L. 95–89, title II, § 210, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95–507, title I, § 105, Oct. 24, 1978, 92 Stat. 1758.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–507 provided that the combined private paid-in capital and paid-in surplus of any company licensed on or after Oct. 1, 1979 pursuant to section 681(c) and (d) of this title would not be less than $500,000.

1977—Subsec. (b). Pub. L. 95–89 inserted "and" to make the corrected text read "capital and surplus".

§ 683. Borrowing operations

[*See main edition for text of* (a) *and* (b)]

(c) Purchase and guarantee operations of Administration

Subject to the following conditions, the Administration is authorized to purchase preferred securities, and to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by small business investment companies operating under authority of section 681(d) of this title. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection.

The Administration may purchase—

(1) shares of nonvoting stock (or other corporate securities having similar characteristics), provided—

(i) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;

(ii) on liquidation of redemption the Administration is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Administration) the Administration shall be paid any amounts as may be due pursuant to subparagraph (i) of this paragraph;

(iii) the purchase price shall be at par value and, in any one sale, $50,000 or more; and

(iv) the amount of such securities purchased and outstanding at any one time shall not exceed—

(A) from a company licensed on or before October 13, 1971, 200 per centum of the combined private paid-in capital and paid-in surplus of such company, or

(B) from any such company licensed after October 13, 1971, and having a combined paid-in capital and paid-in surplus of less than $500,000, 100 per centum of such capital and surplus, or

(C) from any such company licensed after October 13, 1971, and having a combined private paid-in capital and paid-in surplus of $500,000 or more, 200 per centum of such capital and surplus.

The amount of such securities purchased by the Administration in excess of 100 per centum of such capital and surplus from any company described in clause (A) or (C) may not exceed an amount equal to the amount of its funds invested in or legally committed to be invested in equity securities. For the purposes of the subsection, the term "equity securities" means stock of any class (including preferred stock) or limited partnership interests, or shares in a syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint ventures for profit, or unsecured debt instruments which are subordinated by their terms to all other borrowings of the issuer.

The Administration may purchase or guarantee—

[*See main edition for text of* (2) *to* (4)]

(As amended Pub. L. 95–507, title I, § 101, Oct. 24, 1978, 92 Stat. 1757.)

AMENDMENTS

1978—Subsec. (c)(1). Pub. L. 95–507 increased the amount of preferred stock small business investment companies were authorized to sell to the Administration so long as such preferred stock leverage did not exceed 200 per centum of the qualified paid-in capital and so long as the amount of such stock purchased by the Administration was not greater in amount than the investment companies' outstanding equity investments and added the definition of "equity securities".

§ 687. Operation and regulation of companies

[*See main edition for text of* (a)]

(b) Use of advisory services; depository or fiscal agents; investment of funds

Each small business investment company may make use, wherever practicable, of the advisory services of the Federal Reserve System and of the Department of Commerce which are available for and useful to industrial and commercial businesses, and may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services. Any Federal Reserve bank is authorized to act as a depository or fiscal agent for any company operating under provisions of this chapter. Such companies are authorized to invest funds not reasonably needed for their operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in certificates of deposit maturing within one year or less, issued by any institution the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or in savings accounts of such institutions.

[*See main edition for text of* (c) *to* (g)]

(h) Omitted

(As amended Pub. L. 95–507, title I, § 102, Oct. 24, 1978, 92 Stat. 1757.)

CODIFICATION

Subsec. (h), which related limitation on interest rates charged by small business investment companies, overcharges, forfeitures, and recovery of interest payments, was omitted. Section 206 of Pub. L. 93–501, set out as a note under section 1831a of Title 12, Banks and Banking, provided that subsec. (h) applied to

loans made in any State after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date (after Oct. 29, 1974) of enactment by the State of a law prohibiting the charging of interest at rates provided in subsec. (h).

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-507 added provisions authorizing small business investment companies to invest funds not reasonably needed for their operations in certificates of deposit maturing within one year or less issued by particular insured institutions and savings accounts of institutions insured by the Federal deposit insurance corporation.

§ 687i. Interest rates on debentures

Notwithstanding section 683(b) of this title, the effective rate of interest after October 13, 1971, during the first five years thereafter of the term of any debenture purchased by the Administration from a small business investment company under authority of section 683(c) of this title, shall be the greater of 3 per centum or 3 percentage points below the interest rate determined pursuant to section 683(b) of this title. The Administration is authorized to apply interest paid to it by such company for the period from October 13, 1971, to October 27, 1972, without interest thereon, to interest payable after October 27, 1972.

(As amended Pub. L. 95-507, title I, § 103, Oct. 24, 1978, 92 Stat. 1758.)

AMENDMENTS

1978—Pub. L. 95-507 struck out provision requiring a company which has received the benefit of this section to pay the Administration differential costs when making distributions to its shareholders.

SUBCHAPTER IV-A—GUARANTEES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 637 of this title.

PART A—COMMERCIAL OR INDUSTRIAL LEASE AND QUALIFIED CONTRACT GUARANTEES

§ 693. Powers of Administration respecting loans; liquidation of obligations through creation of new leases, execution of subleases, and assignments of leases

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 694-1, 694b of this title.

§ 694. Revolving fund for commercial or industrial lease guarantees

There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purposes of section 692 of this title. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 692 of this title, shall be deposited in the fund. All expenses, excluding administrative expenses, pursuant to operations of the Administrator under section 692 of this title shall be paid from the fund.

(As amended Pub. L. 95-89, title I, § 103, Aug. 4, 1977, 91 Stat. 556.)

AMENDMENTS

1977—Pub. L. 95-89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a $10,000,000 appropriation of capital for the fund; payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year; and investment of noncapital moneys, when not needed for payment of current operating expenses or claims arising under section 692 of this title, in Federal bonds or obligations or bonds or obligations guaranteed by the United States as to principal and interest.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-89 effective on Oct. 1, 1977, see section 106 of Pub. L. 95-89, set out as an Effective Date of 1977 Amendment note under section 633 of this title.

§ 694-2. Revolving fund for qualified contract guarantees

There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purpose of section 694-1 of this title. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 694-1 of this title shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under section 694-1 of this title shall be paid from the fund.

(As amended Pub. L. 95-89, title I, § 104, Aug. 4, 1977, 91 Stat. 556.)

AMENDMENTS

1977—Pub. L. 95-89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a $15,000,000 appropriation of capital for the fund; payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year; and investment of noncapital moneys, when not needed for payment of current operating expenses or claims arising under section 694-2 of this title, in Federal bonds or obligations or bonds or obligations guaranteed by the United States as to principal and interest.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-89 effective on Oct. 1, 1977, see section 106 of Pub. L. 95-89, set out as an Effective Date of 1977 Amendment note under section 633 of this title.

PART B—SURETY BOND GUARANTEES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 636 of this title.

§ 694a. Definitions

As used in this part—

[*See main edition for text of (1) to (3)*]

(4) The term "surety" means the person who (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of

the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment, or (D) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

[*See main edition for text of (5) to (8)*]

(As amended Pub. L. 95-507, title I, § 110, Oct. 24, 1978, 92 Stat. 1758.)

AMENDMENTS

1978—Par. (4). Pub. L. 95-507 added cl. (D).

§ 694b. Surety bond guarantees

(a) Authority of Administration to guarantee surety against loss from principal's breach of bond

The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety (the terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety) against loss, as hereinafter provided, as the result of a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary and coterminous therewith, by a principal on any contract up to $1,000,000, subject to the following conditions:

(1) the person who would be the principal of the bond is a small business concern;

(2) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

(3) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section;

(4) the Administration determines that there is a reasonable expectation that such person will perform the covenants and conditions of the contract with respect to which the bond is required;

(5) the contract meets requirements established by the Administration for feasibility of successful completion and reasonableness of cost; and

(6) the terms and conditions of any bond guaranteed under the authority of this part are reasonable in light of the risks involved and the extent of the surety's participation.

(b) Indemnification of surety against loss from avoiding breach

Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a) of this section, the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a) of this section: *Provided, however*—

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

(2) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable; and

(3) no new agreements to indemnify shall be entered into pursuant to this subsection subsequent to two years after October 24, 1978.

(c) Limitation of liability

Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum not to exceed (1) in the case of a breach of contract, 90 per centum of the loss incurred and paid by the surety to or on behalf of the obligee, or to labor and materialmen, in fulfilling the terms of the contract as the result of the breach; or (2) in a case to which subsection (b) of this section applies, the amount determined under subsection (b) of this section.

(d) Regulations

The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.

(e) Reimbursement of surety; conditions

Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if—

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation, or

(2) the total contract amount at the time of execution of the bond or bonds exceeds $1,000,000.

(f) Procedure for reimbursement

The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

(g) Audit

The Administration may at all reasonable times audit in the offices of a participating surety all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

(h) Administrative provisions

The Administration shall administer this part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration.

(i) Powers of Administration respecting loans

The provisions of section 693 of this title shall apply in the administration of this section.

(As amended Pub. L. 95-507, title I, § 111, Oct. 24, 1978, 92 Stat. 1758.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-507 amended subsec. (a) generally deleting requirement that the Administration consult with the Secretary of Housing and Urban Development, and adding authority to vary the terms and conditions of guarantees on the basis of experience with a particular surety and authority to guarantee bonds ancillary and conterminous with the other named bonds.

Subsec. (b). Pub. L. 95-507 substituted provisions relating to indemnification of a surety against loss sustained in attempting to avoid or avoiding breach for provisions relating to the extent of liability of the Administration for loss incurred by a surety.

Subsec. (c). Pub. L. 95-507 substituted provisions relating to the limitation of the Administration's guarantee liability for provisions relating to the administration of the program and a study and report to Congress regarding the economic soundness of the program.

Subsec. (d). Pub. L. 95-507 substituted provisions relating to regulations for participating sureties for provisions relating to the application of section 693 of this title in the administration of this section.

Subsecs. (e) to (i). Pub. L. 95-507 added subsecs. (e) to (i).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 644 of this title.

§ 694c. Revolving fund for surety bond guarantees

There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under this part shall be paid from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested.

(As amended Pub. L. 95-14, § 4, Mar. 24, 1977, 91 Stat. 25; Pub. L. 95-89, title I, § 105, Aug. 4, 1977, 91 Stat. 556.)

AMENDMENTS

1977—Pub. L. 95-89 prohibited payment of administrative expenses from the fund and deleted provisions which authorized: a $110,000,000 appropriation of capital for the fund; and payment during the fiscal year into the Treasury as miscellaneous receipts, from the fund, of interest on the cumulative amount of appropriations available as capital to the fund less the average undisbursed cash balance in the fund during the year.

Pub. L. 95-14 substituted "$110,000,000" for "$56,500,000".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-89 effective on Oct. 1, 1977, see section 106 of Pub. L. 95-89, set out as an Effective Date of 1977 Amendment note under section 633 of this title.

SUBCHAPTER V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

§ 696. Loans for plant acquisition, construction, conversion or expansion; restrictions and limitations

The Administration may, in addition to its authority under section 695 of this title, make loans for plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: Provided, however, That the foregoing powers shall be subject to the following restrictions and limitations:

[*See main edition for text of (1) to (3)*]

(4) Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration. Community injection funds may be derived, in whole or in part, from—

(A) State or local governments;

(B) banks or other financial institutions;

(C) foundations or other not-for-profit institutions; or

(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this subchapter.

[*See main edition for text of (5)*]

(As amended Pub. L. 95-507, title I, § 112, Oct. 24, 1978, 92 Stat. 1760.)

AMENDMENTS

1978—Par. (4). Pub. L. 95-507 added provisions relating to the derivation of community injection funds.

CHAPTER 15—ECONOMIC RECOVERY

SUBCHAPTER I—GENERALLY

§ 712a. Limitation of obligations for administrative expenses of certain agencies; limitation on life of certain agencies

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1406a.

§ 713a-4. Obligations of Commodity Credit Corporation; issuance; sale; purchase; redemption; etc.

With the approval of the Secretary of the Treasury, the Commodity Credit Corporation is authorized to issue and have outstanding at any one time, bonds, notes, debentures, and other similar obligations in an aggregate amount not exceeding $25,000,000,000. Such obligations shall be in such forms and denominations, shall have such maturities, shall bear

such rates of interest, shall be subject to such terms and conditions, and shall be issued in such manner and sold at such prices as may be prescribed by the Commodity Credit Corporation, with the approval of the Secretary of the Treasury. Such obligations shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such obligations shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Commodity Credit Corporation shall be unable to pay upon demand, when due, the principal of, or interest on, such obligations, the Secretary of the Treasury shall pay to the holder the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such obligations. The Secretary of the Treasury, in his discretion, is authorized to purchase any obligations of the Commodity Credit Corporation issued hereunder, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of the Commodity Credit Corporation's obligations hereunder. The Secretary of the Treasury may at any time sell any of the obligations of the Commodity Credit Corporation acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of the obligations of the Commodity Credit Corporation shall be treated as public-debt transactions of the United States. No such obligations shall be issued in excess of the assets of the Commodity Credit Corporation, including the assets to be obtained from the proceeds of such obligations, but a failure to comply with this provision shall not invalidate the obligations or the guaranty of the same: *Provided*, That this sentence shall not limit the authority of the Corporation to issue obligations for the purpose of carrying out its annual budget programs submitted to and approved by the Congress pursuant to the Government Corporation Control Act [31 U.S.C. 841 et seq.]. The Commodity Credit Corporation shall have power to purchase such obligations in the open market at any time and at any price.

(As amended May 15, 1978, Pub. L. 95-279, title III, § 301(b), 92 Stat. 242.)

AMENDMENTS

1978—Pub. L. 95-279 substituted "$25,000,000,000" for "$14,500,000,000".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 301(d) of Pub. L. 95-279 provided that: "The provisions of this section [amending this section and section 714b of this title and enacting provision set out as a note under section 714b of this title] shall become effective October 1, 1978."

§ 713a-10. Authority to make expenditures; limitation on administrative expenses

The Commodity Credit Corporation is authorized to make such expenditures, within the limits of funds and borrowing authority available to such corporation and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 849 of title 31, as may be necessary in carrying out the programs set forth in the budget for the fiscal year 1979, for such corporation, except as hereinafter provided:

For the fiscal year 1979, not to exceed $50,100,000 shall be available for administrative expenses of the Commodity Credit Corporation: *Provided*, That this authorization shall be available to support the Office of the General Sales Manager which shall work to expand and strengthen sales of U.S. commodities in world markets (including those of the Corporation) pursuant to existing authority (including that contained in the Corporation's charter), and that such funds shall be used by the General Sales Manager to carry out the above activities. The General Sales Manager shall report directly to the Board of Directors of the Corporation of which the Secretary of Agriculture is a member. The General Sales Manager shall obtain, assimilate, and analyze all available information on developments related to private sales, as well as those funded by the Corporation, including grade and quality as sold and as delivered and shall submit quarterly reports to the appropriate committees of Congress concerning such developments: *Provided further*, That none of the funds in this Act may be used to carry out an Export Credit Sales program in excess of $2,200,000,000 in fiscal year 1979: *Provided further*, That not less than 7 per centum of this authorization shall be placed in reserve to be apportioned pursuant to section 665 of title 31, for use only in such amounts and at such times as may become necessary to carry out program operations: *Provided further*, That all necessary expenses (including legal and special services performed on a contract or fee basis, but not including other personal services) in connection with the acquisition, operation, maintenance, improvement, or disposition of any real or personal property belonging to the Corporation or in which it has an interest, including expenses of collections of pledged collateral, shall be considered as nonadministrative expenses for the purposes hereof.

(Pub. L. 95-448, title I, § 101, Oct. 11, 1978, 92 Stat. 1081.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 95-448, Oct. 11, 1978, 92 Stat. 1073, known as the Agriculture, Rural Development, and Related Agencies Appropriation Act, 1979. For complete classification of this Act to the Code, see Tables.

SIMILAR PROVISIONS

Section is from the Agriculture, Rural Development, and Related Agencies Appropriation Act, 1979. Similar provisions were contained in the following prior appropriations Acts:

Aug. 12, 1977, Pub. L. 95-97, title I, § 101, 91 Stat. 817, 818.
July 12, 1976, Pub. L. 94-351, title I, § 101, 90 Stat. 858.

SUBCHAPTER II—COMMODITY CREDIT CORPORATION

§ 714b. General powers of Corporation

The Corporation—

[*See main edition for text of (a) to (g)*]

(h) May contract for the use, in accordance with the usual customs of trade and commerce, of plants and facilities for the physical handling, storage, processing, servicing, and transportation of the agricultural commodities subject to its control. The Corporation shall have power to acquire personal property necessary to the conduct of its business but shall not have power to acquire real property or any interest therein except that it may (a) rent or lease office space necessary for the conduct of its business and (b) acquire real property or any interest therein for the purpose of providing storage adequate to carry out effectively and efficiently any of the Corporation's programs, or of securing or discharging obligations owing to the Corporation, or of otherwise protecting the financial interests of the Corporation: *Provided*, That the authority contained in this subsection shall not be utilized by the Corporation for the purpose of acquiring real property, or any interest therein, in order to provide storage facilities for any commodity unless the Corporation determines that existing privately owned storage facilities for such commodity in the area concerned are not adequate: *Provided further*, That no refrigerated cold storage facilities shall be constructed or purchased except with funds specifically provided by Congress for that purpose: *And provided further*, That nothing contained in this subsection shall limit the duty of the Corporation, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, to utilize the usual and customary channels, facilities, and arrangements of trade and commerce in the warehousing of commodities: *And provided further*, That to encourage the storage of grain on farms, where it can be stored at the lowest cost, the Corporation shall make loans to grain growers needing storage facilities when such growers shall apply to the Corporation for financing the construction or purchase of suitable storage, and these loans shall be deducted from the proceeds of price support loans or purchase agreements made between the Corporation and the growers: *And provided further*, That to encourage the storage of dry or high moisture grain, soybeans, and rice, and high moisture forage and silage on farms, where the commodities can be stored at the lowest cost, the Corporation shall—during the period beginning October 1, 1977, and ending September 30, 1981—make secured storage facility loans not to exceed $50,000 to growers of such commodities in amounts not less than 75 per centum of the total construction cost of such facility, including but not limited to the cost of structural and equipment foundations, electrical systems, grain handling systems, drying equipment, and site preparation, or, in the discretion of the Corporation, such loans may be made in such amounts not to exceed $50,000 to cover remodeling costs of existing storage facilities, as are set forth in regulations issued by the Secretary; the size of such facility for which a loan is obtained shall be based upon the amount of space required to store the quantity of the commodity estimated to be produced by the borrower during a two-year period; such loans shall be for a period not to exceed ten years at an interest rate based upon the rate of interest charged the Corporation by the United States Treasury; and the loans shall be deducted from the proceeds of price support loans or purchase agreements made between the Corporation and the growers. Notwithstanding any other provision of law, the Commodity Credit Corporation is authorized, upon terms and conditions prescribed or approved by the Secretary of Agriculture, to accept strategic and critical materials produced abroad in exchange for agricultural commodities acquired by the Corporation. Insofar as practicable, in effecting such exchange of goods, normal commercial trade channels shall be utilized and priority shall be given to commodities easily storable and those which serve as prime incentive goods to stimulate production of critical and strategic materials. The determination of the quantities and qualities of such materials which are desirable for stock piling and the determination of which materials are strategic and critical shall be made in the manner prescribed by section 2 of the Strategic and Critical Materials Stock Piling Act (60 Stat. 596) [50 U.S.C. 98a]. Strategic and critical materials acquired by Commodity Credit Corporation in exchange for agricultural commodities shall, to the extent approved by the Munitions Board of the Department of Defense, be transferred to the stock pile provided for by the Strategic and Critical Materials Stock Piling Act [50 U.S.C. 98 et seq.]: and when transferred to the stock pile the Commodity Credit Corporation shall be reimbursed for the strategic and critical materials so transferred to the stock pile from the funds made available for the purpose of the Strategic and Critical Materials Stock Piling Act, in an amount equal to the fair market value, as determined by the Secretary of the Treasury, of the material transferred to the stock pile. Nothing contained herein shall limit the authority of the Commodity Credit Corporation to acquire, hold, or dispose of such quantity of strategic and critical materials as it deems advisable in carrying out its functions and protecting its assets: *Provided*, That, notwithstanding any other provision of law, where a grain storage facility owned by the Corporation is not needed by the Corporation and, upon being offered for sale no person offers to pay the minimum price set by the Corporation for such facility for use in connection with storage or handling of agricultural commodities, then the Corporation may, without declaring such facility to be excess property, sell it by bids at not less than such minimum price to any public or private nonprofit agency or organization for use for the

purposes of such agency or organization. This provision shall apply also to facilities which on the effective date of this Act have been declared excess to the needs of the Commodity Credit Corporation but have not been claimed by any other Government agency, or surplus to the needs of the Government but not disposed of pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C. 471 et seq.].

(i) May borrow money subject to any provision of law applicable to the Corporation: *Provided*, That the total of all money borrowed by the Corporation, other than trust deposits and advances received on sales, shall not at any time exceed in the aggregate $25,000,000,000. The Corporation shall at all times reserve a sufficient amount of its authorized borrowing power which, together with other funds available to the Corporation, will enable it to purchase, in accordance with its contracts with lending agencies, notes, or other obligations evidencing loans made by such agencies under the Corporation's programs.

[*See main edition for text of (j) to (m)*]

(As amended Sept. 29, 1977, Pub. L. 95-113, title XI, § 1104, 91 Stat. 954; May 15, 1978, Pub. L. 95-279, title III, § 301(a), 92 Stat. 242.)

AMENDMENTS

1978—Subsec. (l). Pub. L. 95-279 substituted "$25,000,000,000" for "$14,500,000,000".

1977—Subsec. (h). Pub. L. 95-113 added proviso directing the Corporation to make secured storage facility loans of not to exceed $50,000 to growers of dry or high moisture grain, soybeans, rice, and high moisture forage and silage during the period Oct. 1, 1977, to Sept. 30, 1981.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-279 effective Oct. 1, 1978, see section 301(d) of Pub. L. 95-279, set out as an Effective Date of 1978 Amendment note under section 713a-4 of this title.

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 1104 of Pub. L. 95-113 provided in part that the amendment by Pub. L. 95-113 is effective only with respect to the fiscal years beginning Oct. 1, 1977, and ending Sept. 30, 1981.

INCREASE IN BORROWING AUTHORITY EFFECTIVE ONLY TO EXTENT PROVIDED IN APPROPRIATION ACTS

Section 301(c) of Pub. L. 95-279 provided that: "The increase in the borrowing authority of the Commodity Credit Corporation made by this section [amending subsec. (i) of this section and section 713a-4 of this title] shall be effective only to the extent provided in appropriation Acts."

CHAPTER 15B—NATURAL GAS

Sec.
717x. Conserved natural gas. [New].
(a) Determination of entitlement.
(b) Conditions, limitations, etc.
(c) Definitions.
717y. Voluntary conversion of natural gas users to heavy fuel oil [New].
(a) Transfer of contractual interests.
(b) Commission approval.
(c) Restrictions on transfers unenforceable.
(d) Contractual obligations unaffected.
(e) Definitions.
(f) Coordination with this chapter.
(g) Volume limitation.
717z. Emergency conversion of utilities and other facilities [New].
(a) Presidential declaration.
(b) Limitation.
(c) Prohibitions.
(d) Limitations.
(e) Exemption for secondary uses.
(f) Exemption for air-quality emergencies.
(g) Limitation on injunctive relief.
(h) Definitions.
(i) Use of general terms.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 717x, 717y, 719c, 719j, 790a, 3301, 3312, 3314, 3316, 3319, 3347, 3348, 3362, 3371, 3372, 3374, 3393, 3394, 3412, 3416, 3431 of this title; title 10 section 7430; title 16 section 2603; title 30 section 185; title 42 sections 7172, 7173, 8211, 8441; title 43 section 1353; title 49 sections 1671, 1672; title 50 section 167l.

§ 717. Regulation of natural gas companies

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions with regard to establishment, review, and enforcement of rates and charges for transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company were transferred to the Federal Energy Regulatory Commission by sections 7172(a)(1)(C) and 7293 of Title 42, The Public Health and Welfare.

EMERGENCY NATURAL GAS ACT OF 1977

Pub. L. 95-2, §§ 1 to 14, Feb. 2, 1977, 91 Stat. 4 to 10, provided:

"[SECTION 1.] That this Act may be cited as the 'Emergency Natural Gas Act of 1977'.

"DEFINITIONS

"SEC. 2. As used in this Act:

"(1) The term 'high-priority use' means—

"(A) use of natural gas in a residence;

"(B) use of natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day; or

"(C) any other use of natural gas the termination of which the President determines would endanger life, health, or maintenance of physical property.

"(2) The term 'interstate pipeline' means any natural-gas company, as defined in section 2(6) of the Natural Gas Act [section 717a(6) of this title], which is engaged in the transportation by pipeline of natural gas.

"(3) The term 'intrastate pipeline' means any person (other than an interstate pipeline) engaged in the transportation by pipeline of natural gas.

"(4) The term 'interstate natural gas' means natural gas (other than natural gas transported pursuant to a transportation certificate issued under 18 C.F.R. 2.79) transported by an interstate pipeline in a facility which is certificated under the Natural Gas Act [this chapter] or which would be required to be so certificated but for section 1(c) of such Act [subsec. (c) of this section].

"(5) The term 'local distribution company' means any person (including a governmental entity) which receives natural gas for local distribution and resale to natural gas users.

"(6) The term 'antitrust laws' means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 13, 14-19, 20, 21, 22-27), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the

Wilson Tariff Act (15 U.S.C. 8-9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a), and similar State laws.

"(7) The term 'State' means any State of the United States and the District of Columbia.

"PRESIDENTIAL DECLARATION

"SEC. 3. The President may declare a natural gas emergency if he finds that a severe natural gas shortage endangering the supply of natural gas for high-priority uses exists or is imminent in the United States or in any region thereof and that the exercise of his authorities under section 4 is reasonably necessary, having exhausted other remedies to the maximum extent practicable, to assist in meeting requirements for such uses. Such emergency shall be terminated when the President finds that such shortages no longer exist and are no longer imminent.

"EMERGENCY DELIVERIES AND TRANSPORTATION OF NATURAL GAS

"SEC. 4. (a)(1) If the President finds it necessary to assist in meeting the requirements for high-priority uses of natural gas (including short-term storage replenishment or injection for protection of high-priority uses), on the basis of a notification by the Governor of any State pursuant to subsection (c) or on the basis of other information available to the President, the President may, during a natural gas emergency declared under section 3, by order, require—

"(A) any interstate pipeline to make emergency deliveries of, or to transport, interstate natural gas to any other interstate pipeline or to any local distribution company served by an interstate pipeline for purposes of meeting such requirements;

"(B) any intrastate pipeline to transport interstate natural gas from any interstate pipeline to another interstate pipeline or to any local distribution company served by an interstate pipeline for purposes of meeting such requirements; or

"(C) the construction and operation by any pipeline of any facilities necessary to effect such deliveries or transportation.

No such delivery or transportation may continue after April 30, 1977, or after the President terminates the emergency declared under section 3, whichever is earlier.

"(2) No order may be issued under this subsection unless the President determines that such order will not—

"(A) create for the interstate pipeline delivering interstate natural gas a supply shortage which will cause such pipeline to be unable to meet the requirements for high-priority uses served, directly or indirectly, by such pipeline;

"(B) result in a disproportionate share of deliveries or curtailments of natural gas experienced by such interstate pipeline when compared to deliveries and resulting curtailments which are experienced as a result of orders applicable to other interstate pipelines (as determined by the President); and

"(C) require transportation of natural gas by any pipeline in excess of its available transportation capacity.

"(3) In issuing such order the President shall also consider the relative availability of alternative fuel to users of the interstate pipeline ordered to make deliveries pursuant to this section.

"(b) Compliance by any pipeline with an order issued under subsection (a) shall not subject such pipeline to regulation under the Natural Gas Act (15 U.S.C. 717 et seq.) [this chapter] or to regulation as a common carrier under any provision of State or Federal law. No action required to be taken under an order issued under subsection (a) shall be subject to any provision of the Natural Gas Act and any such order shall supersede any provision of a certification, or other requirement, under the Natural Gas Act which is inconsistent with such order.

"(c)(1) The Governor of any State may notify the President of any finding by such Governor that a shortage of natural gas within such State, endangering the supply of natural gas for high-priority uses, exists or is imminent and that the State, and agencies and instrumentalities thereof, have exercised their authority to the fullest extent practicable and reasonable under the circumstances to overcome such shortage.

"(2) The Governor shall submit, together with any notification under paragraph (1), information upon which he has based his finding under such paragraph, including—

"(A) volumes of natural gas required to meet the requirements for high-priority uses in such State;

"(B) information received from persons in the business of producing, selling, transporting, or delivering natural gas in such State as to the volumes of natural gas available in such State; and

"(C) such other information as the Governor determines appropriate to apprise the President of emergency deliveries and transportation of interstate natural gas needed in such State.

"(d) The President may request that representatives of interstate pipelines, intrastate pipelines, local distribution companies, and other persons meet and provide assistance to the President in carrying out his authority under this section.

"(e)(1) In order to obtain information to carry out his authority under this Act, the President may—

"(A) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

"(B) require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information, and such answers shall be made within such reasonable period, and under oath or otherwise, as the President may determine; and

"(C) secure, upon request, any information from any Federal department or executive agency.

"(2) The appropriate United States district court may, upon petition of the Attorney General at the request of the President, in the case of refusal to obey a subpena or order of the President issued under this subsection, issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

"(f)(1) If the parties to any order issued under subsection (a) fail to agree upon the terms of compensation for deliveries (which may include compensation in kind) or transportation required pursuant to such order, the President, after a hearing held either before or after such order takes effect, shall, by supplemental order, prescribe the amount of compensation (which may include compensation in kind) to be paid for such deliveries or transportation and for any other expenses incurred in delivering or transporting such gas.

"(2) If, for the purpose of a supplemental order pursuant to paragraph (1), the party making emergency deliveries pursuant to subsection (a)—

"(A) indicates a preference for compensation in kind, the President shall direct that compensation in kind be provided by August 1, 1977, to the maximum extent practicable,

"(B) indicates a preference for compensation, or the President determines pursuant to paragraph (A) of this subsection that any portion thereof cannot practicably be compensated in kind, the President shall calculate the amount of compensation for deliveries of natural gas, based upon the amount required to make the interstate pipeline delivering such natural gas and its local distribution companies whole for loss of sales resulting therefrom; including the actual amount paid by such interstate pipeline or any of its local distribution companies for the volumes of natural gas or higher cost gas such as synthetic natural gas which were needed to replace natural gas delivered pursuant to an order under subsection (a); and for transportation, storage, and

other expenses, based upon reasonable costs, as determined by the President.

"(g) In order to effect the purposes of this Act, the President shall monitor the operation of any order made pursuant to this section to assure that natural gas delivered pursuant to this section is applied to high-priority uses only.

"ANTITRUST PROTECTIONS

"SEC. 5. (a) There shall be available as a defense for any person to civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action taken or meeting held pursuant to a request or order of the President under section 4(a) or (d) of this Act, if—

"(1) such action was taken or meeting held solely for the purpose of complying with the President's request or order;

"(2) such action was not taken for the purpose of injuring competition; and

"(3) such person complied with the requirements of subsection (b) of this section.

Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

"(b) A meeting held pursuant to a request by the President under section 4(d) or pursuant to an order under section 4(a) complies with the requirements of subsection (a) if—

"(1) there is present at such meeting a full-time Federal employee designated for such purposes by the Attorney General;

"(2) a full and complete record of such meeting is taken and deposited, together with any agreements resulting therefrom, with the Attorney General, who shall make it available for public inspection and copying;

"(3) the Attorney General and the Federal Trade Commission have the opportunity to participate from the beginning in the development and carrying out of agreements and actions under sections 4(a) and 4(d), in order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this Act; and

"(4) such other procedures as may be specified in such request or order are complied with.

"EMERGENCY PURCHASES

"SEC. 6. (a) The President may authorize any interstate pipeline or local distribution company served by an interstate pipeline (or class or category of such pipelines or companies) to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for emergency supplies of natural gas for delivery before August 1, 1977—

"(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser as determined by the President) if (A) such natural gas is not produced from the Outer Continental Shelf and (B) the sale or transportation of such gas was not, immediately before the date on which such contract was entered into, certificated under the Natural Gas Act [this chapter], or

"(2) from any intrastate pipeline, local distribution company, or other person (other than in interstate pipeline or a producer of natural gas).

The President may not authorize any emergency purchase contract under this subsection for emergency supplies of natural gas for sale and delivery from any intrastate pipeline which is operating under court supervision as of January 1, 1977, unless the court approves.

"(b)(1) The provisions of the Natural Gas Act [this chapter] shall not apply—

"(A) to any sale of natural gas to an interstate pipeline or local distribution company under the authority of subsection (a) or to any transportation by an intrastate pipeline in connection with any such sale; or

"(B) to any natural gas company (within the meaning of the Natural Gas Act [this chapter]) solely by reason of any such sale or transportation.

"(2) In exercising its authority under the Natural Gas Act [this chapter], the Federal Power Commission [see Transfer of Functions note set out above] shall not disallow, in whole or in part, recovery by any interstate pipeline, through the rates and charges made, demanded, or received by such pipeline, the amounts actually paid by it for natural gas purchased, transported, or other costs incurred pursuant to subsection (a).

"(c)(1) The President may, by order, require any pipeline to transport such natural gas, and to construct and operate such facilities for transportation of natural gas, as may be necessary to carry out contracts authorized under subsection (a). The costs of any such required construction shall be paid by the party receiving such natural gas. No such order shall require any pipeline to transport any natural gas in excess of such pipeline's available capacity.

"(2) Compliance by any pipeline with any order under this subsection shall not subject such pipeline to regulation under the Natural Gas Act [this chapter] or to regulation as a common carrier under any provision of State law.

"(d) As used in this section, the term 'Outer Continental Shelf' has the same meaning as such term has under section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

"ADJUSTMENT IN CHARGES FOR LOCAL DISTRIBUTION COMPANIES

"SEC. 7. Compensation received by an interstate pipeline pursuant to section 4 in excess of the amount such pipeline would have charged its local distribution companies shall be credited to such local distribution companies in proportion to their share of any natural gas not delivered together with credits necessary to make whole any local distribution company which replaced such natural gas with higher cost gas such as synthetic natural gas as prescribed in section 4(f)(2)(B). Compensation paid by an interstate pipeline for deliveries or emergency purchases of natural gas pursuant to section 4 or section 6 shall be charged to such interstate pipeline's local distribution companies in proportion to their share of such natural gas deliveries or purchases.

"RELATIONSHIP TO NATURAL GAS ACT

"SEC. 8. Except as expressly provided in this Act, nothing contained in this Act shall be interpreted to change, modify, or otherwise affect rules, regulations, or other regulatory requirements or procedures of the Federal Power Commission [see Transfer of Functions note set out above] pursuant to the provisions of the Natural Gas Act [this chapter].

"EFFECT OF CERTAIN CONTRACTUAL OBLIGATIONS

"SEC. 9. (a) There shall be available as a defense to any action brought for breach of contract under Federal or State law arising out of any act or omission that such act was taken or that such omission occurred for purposes of complying with any order issued under section 4(a).

"(b) Any contractual provision—

"(1) prohibiting the sale or commingling of natural gas subject to such contract with natural gas subject to the provisions of the Natural Gas Act [this chapter], or

"(2) terminating any obligation under any such contract as a result of such sale or commingling,

is hereby declared against public policy and unenforceable with respect to such natural gas if an order under section 4(a) or an authorization under section 6(a) applies to the delivery, transportation, or contract for supplies of such natural gas.

"(c) The amounts and prices of any natural gas purchases pursuant to an order under section 4(a), an authorization under section 6(a), or a contract entered into pursuant to 18 C.F.R. 2.68 after the date of the enactment of this Act [Feb. 2, 1977] and before August 1, 1977, shall not be taken into account for purposes of any contractual provision which determines the price of any natural gas (or terminates the contract for the sale of natural gas) on the basis of sales of other natural gas.

"ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

"SEC. 10. (a) Subchapter II of chapter 5 of title 5 of the United States Code (other than sections 554, 556, and 557 thereof) shall apply to orders and other actions under this Act.

"(b) Except with respect to enforcement of orders or subpenas under section 4(e), the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended [set out as a note under section 1904 of Title 12, Banks and Banking], shall have exclusive original jurisdiction to review all civil cases and controversies under this Act, including any order issued, or other action taken, under this Act. The Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 4(e) of this Act; such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days of the entry of judgment by the district court.

"(c) Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, by the President under this Act.

"ENFORCEMENT

"SEC. 11. (a) Any person who violates an order or supplemental order issued under section 4 or an order under section 6(c) shall be subject to a civil penalty of not more than $25,000 for each violation of such order. Each day of violation shall constitute a separate offense.

"(b) Any person who willfully violates an order or supplemental order issued under section 4 or an order under section 6(c) shall be fined not more than $50,000 for each violation of such order. Each day of violation shall constitute a separate violation.

"(c) Whenever it appears to the President that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order issued under section 4(a), any supplemental order issued under section 4(f), or any order under section 6(c), the President may request the Attorney General to bring a civil action to enjoin such acts or practices and, upon showing, a temporary restraining order or preliminary or permanent injunction shall be granted without bond. In any such action, the court may also issue mandatory injunctions commanding any person to comply with any such order or supplemental order.

"REPORTING

"SEC. 12. (a) In issuing any order under section 4(a) or granting any authorization under section 6, the President shall require that the prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order or authorization shall be reported to him on a weekly basis and such reports shall be made available to the Congress.

"(b) The President shall report to Congress not later than October 1, 1977, respecting his actions under this Act.

"DELEGATION OF AUTHORITIES

"SEC. 13. The President may delegate all or any portion of the authority granted to him under this Act to such executive agencies (within the meaning of 5 U.S.C. 105) or officers of the United States as he determines appropriate, and may authorize such redelegation as may be appropriate. Except with respect to section 552 of title 5 of the United States Code, any officer or executive agency of the United States to which authority is delegated or redelegated under this Act shall be subject only to such procedural requirements respecting the exercise of such authority as the President would be subject to if such authority were not so delegated.

"PREEMPTION OF INCONSISTENT STATE OR LOCAL ACTION

"SEC. 14. Any order issued pursuant to this Act shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order."

EX. ORD. NO. 11969. ADMINISTRATION OF EMERGENCY NATURAL GAS ACT OF 1977

Ex. Ord. No. 11969, Feb. 2, 1977, 42 F.R. 6791, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Section 13 of the Emergency Natural Gas Act of 1977 (Public Law 95-2) [set out as a note above], and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. There is hereby delegated to the Secretary of Energy hereafter the Secretary, all of the authority vested in the President by the Emergency Natural Gas Act of 1977 [set out as a note above], except for the authority to declare and terminate a natural gas emergency pursuant to Section 3 of said Act [set out as a note above].

SEC. 2. The Secretary shall, to the extent he deems appropriate, consult with the the heads of other Executive agencies in exercising the authority delegated to him by this Order.

SEC. 3. All authority delegated to the Secretary by this Order may be further delegated, in whole or in part, by the Secretary to any other officer of the United States or to any Executive agency.

SEC. 4. The heads of all Executive agencies shall cooperate with and assist the Secretary in carrying out the authority delegated to him by this Order.

SEC. 5. All Executive agencies shall, to the extent permitted by law, provide the Secretary on request such administrative support and information as may be necessary to carry out the authority delegated to him by this Order.

JIMMY CARTER.

PROCLAMATION NO. 4485

Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, under which the President declared that a natural gas emergency existed within the meaning of section 3 of the Emergency Natural Gas Act of 1977, set out as a note above, has been eliminated as said declaration was terminated by Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, set out as a note below.

PROC. NO. 4495. TERMINATION OF NATURAL GAS EMERGENCY

Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, provided:

On February 2, 1977, Proclamation No. 4485 was issued which proclaimed and declared the existence of a natural gas emergency within the meaning of Section 3 of the Emergency Natural Gas Act of 1977 [set out as a note above]. Such action was necessary because of the imminent shortage of natural gas for high-priority uses and the inadequacy of remedial measures other than the extraordinary measures authorized by Section 4 of that Act [set out as a note above]. Section 3 of the Emergency Natural Gas Act

of 1977 [set out as a note above], however, requires termination of such emergency when the President finds that such shortages no longer exist and are no longer imminent.

I now find that the severe natural gas shortages which necessitated the declaration of a natural gas emergency within the meaning of Section 3 of said Act [set out as a note above] no longer exist and are no longer imminent.

Now, THEREFORE, I, JIMMY CARTER, President of the United States of America, by virtue of the authority vested in me by the Constitution and statutes of the United States, including the Emergency Natural Gas Act of 1977 [set out as a note above], do hereby proclaim and declare that the natural gas emergency declared to exist by Proclamation No. 4485 of February 2, 1977 is terminated.

The fact that this winter's natural gas emergency is over in no way signals an end to our energy crisis. On the contrary, it is a reminder that our natural gas supply is far short of potential demand. Unless we take remedial action to develop a natural gas policy as part of a comprehensive energy policy, our economy, and even our homes, will be in increasing danger with each passing year. On April 20, 1977, I shall propose a policy to provide a long-term solution to our energy problems.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord nineteen hundred seventy-seven, and of the Independence of the United States of America the two hundred and first.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3301, 3431 of this title; title 42 section 7172.

§ 717a. Definitions

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291 and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 717y, 3431 of this title; title 43 section 1862.

§ 717b. Exportation or importation of natural gas

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291 and 7293 of Title 42, The Public Health and Welfare.

EX. ORD. NO. 10485. PERFORMANCE OF FUNCTIONS RESPECTING ELECTRIC POWER AND NATURAL GAS FACILITIES LOCATED ON UNITED STATES BORDERS

Ex. Ord. No. 10485, Sept. 3, 1953, 18 F.R. 5397, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, provided:

SECTION 1. (a) The Secretary of Energy is hereby designated and empowered to perform the following-described functions:

(1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.

(2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation or importation of natural gas to or from a foreign country.

(3) Upon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Secretary of Energy shall have the power to attach to the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Secretary of Energy, the Secretary of State, and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Secretary of Energy shall submit to the President for approval or disapproval the application for a permit with the respective views of the Secretary of Energy, the Secretary of State and the Secretary of Defense.

SEC. 2. [Deleted.]

SEC. 3. The Secretary of Energy is authorized to issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of the authority delegated to it by this order.

SEC. 4. All Presidential Permits heretofore issued pursuant to Executive Order No. 8202 of July 13, 1939, and in force at the time of the issuance of this order, and all permits issued hereunder, shall remain in full force and effect until modified or revoked by the President or by the Secretary of Energy.

SEC. 5. Executive Order No. 8202 of July 13, 1939, is hereby revoked.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3347 of this title.

§ 717c. Rates and charges

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions with regard to establishment, review, and enforcement of rates and charges for transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company and the establishment, review, and enforcement of curtailments under this chapter, other than the establishment and review of priorities for such curtailments, were transferred to the Federal Energy Regulatory Commission by sections 7172(a)(1)(C), (E) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 717y, 3431 of this title; title 42 sections 7172, 8441; title 50 section 1671.

§ 717d. Fixing rates and charges; determination of cost of production or transportation

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions with regard to establishment, review, and enforcement of rates and charges for transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company were transferred to the Federal Energy Regulatory Commission by sections 7172(a)(1)(C) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 717y, 3431 of this title; title 42 sections 7172, 8441; title 50 section 1671.

§ 717e. Ascertainment of cost of property

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions with regard to establishment, review, and enforcement of rates and charges for transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company were transferred to the Federal Energy Regulatory Commission by sections 7172(a)(1)(C) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 7172.

§ 717f. Construction, extension, or abandonment of facilities

[See main edition for text of (a) and (b)]

(c) Certificate of public convenience and necessity

(1)(A) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

(B) In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of—

(A) natural gas sold by the producer to such person; and

(B) natural gas produced by such person.

[See main edition for text of (d)]

(e) Granting of certificate of public convenience and necessity

Except in the cases governed by the provisos contained in subsection (c)(1) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

[See main edition for text of (f) to (h)]

(As amended Nov. 9, 1978, Pub. L. 95-617, title VI, § 608, 92 Stat. 3173.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-617, § 608(a), (b)(1), designated existing first paragraph as par. (1)(A) and existing second paragraph as par. (1)(B) and added par. (2).

Subsec. (e). Pub. L. 95-617, § 608(b)(2), substituted "subsection (c)(1)" for "subsection (c)".

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions with regard to issuance of certificates of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections were transferred to the Federal Energy Regulatory Commission by sections 7172(a)(1)(D) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 717y, 3301, 3312, 3394, 3431 of this title; title 42 sections 7172, 8441; title 43 sections 1351, 1862; title 49 section 1676.

§§ 717g, 717h

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291 and 7293 of Title 42, The Public Health and Welfare.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 42 section 7172.

§§ 717i, 717j

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291 and 7293 of Title 42, The Public Health and Welfare.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 42 section 7177.

§§ 717*l* to 717p

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291 and 7293 of Title 42, The Public Health and Welfare.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 42 section 7172.

§§ 717q, 717r

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291 and 7293 of Title 42, The Public Health and Welfare.

§§ 717s, 717t

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291 and 7293 of Title 42, The Public Health and Welfare.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 42 section 7172.

§ 717u. Jurisdiction of offenses; enforcement of liabilities and duties

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291 and 7293 of Title 42, The Public Health and Welfare.

§ 717x. Conserved natural gas

(a) Determination of entitlement

(1) For purposes of determining the natural gas entitlement of any local distribution company under any curtailment plan, if the Commission revises any base period established under such plan, the volumes of natural gas which such local distribution company demonstrates—

(A) were sold by the local distribution company, for a priority use immediately before the implementation of conservation measures, and

(B) were conserved by reason of the implementation of such conservation measures,

shall be treated by the Commission following such revision as continuing to be used for the priority use referred to in subparagraph (A).

(2) The Commission shall, by rule, prescribe methods for measurement of volumes of natural gas to which subparagraphs (A) and (B) of paragraph (1) apply.

(b) Conditions, limitations, etc.

Subsection (a) of this section shall not limit or otherwise affect any provision of any curtailment plan, or any other provision of law or regulation, under which natural gas may be diverted or allocated to respond to emergency situations or to protect public health, safety, and welfare.

(c) Definitions

For purposes of this section—

(1) The term "conservation measures" means such energy conservation measures, as determined by the Commission, as were implemented after the base period established under the curtailment plan in effect on November 9, 1978.

(2) The term "local distribution company" means any person engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(3) The term "curtailment plan" means a plan (including any modification of such plan required by the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.]) in effect under the Natural Gas Act [15 U.S.C. 717 et seq.] which provides for recognizing and implementing priorities of service during periods of curtailed deliveries.

(Pub. L. 95-617, title VI, § 605, Nov. 9, 1978, 92 Stat. 3167.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (c)(3), is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§ 3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

The Natural Gas Act, referred to in subsec. (c)(3), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to this chapter (§ 717 et seq.). For complete classification of this Act to the Code, see section 717w of this title and Tables.

CODIFICATION

Section is a part of the Public Utility Regulatory Policies Act of 1978, and not a part of the Natural Gas Act which comprises this chapter.

§ 717y. Voluntary conversion of natural gas users to heavy fuel oil

(a) Transfer of contractual interests

(1) In order to facilitate voluntary conversion of facilities from the use of natural gas to the use of heavy petroleum fuel oil, the Commission shall, by rule, provide a procedure for the

approval by the Commission of any transfer to any person described in paragraph 2(B) (i), (ii), or (iii) of contractual interests involving the receipt of natural gas described in paragraph 2(A).

(2)(A) The rule required under paragraph (1) shall apply to—

(i) natural gas—

(I) received by the user pursuant to a contract entered into before September 1, 1977, not including any renewal or extension thereof entered into or on or after such date other than any such extension or renewal pursuant to the exercise by such user of an option to extend or renew such contract;

(II) other than natural gas the sale for resale or the transportation of which was subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] as of September 1, 1977;

(III) which was used as a fuel in any facility in existence on September 1, 1977.

(ii) natural gas subject to a prohibition order issued under section 717z of this title.

(B) The rule required under paragraph (1) shall permit the transfer of contractual interests—

(i) to any interstate pipeline;

(ii) to any local distribution company served by an interstate pipeline; and

(iii) to any person served by an interstate pipeline for a high priority use by such person.

(3) The rule required under paragraph (1) shall provide that any transfer of contractual interests pursuant to such rule shall be under such terms and conditions as the Commission may prescribe. Such rule shall include a requirement for refund of any consideration, received by the person transferring contractual interests pursuant to such rule, to the extent such consideration exceeds the amount by which the costs actually incurred, during the remainder of the period of the contract with respect to which such contractual interests are transferred, in direct association with the use of heavy petroleum fuel oil as a fuel in the applicable facility exceeds the price under such contract for natural gas, subject to such contract, delivered during such period.

(4) In prescribing the rule required under paragraph (1), and in determining whether to approve any transfer of contractual interests, the Commission shall consider whether such transfer of contractual interests is likely to increase demand for imported refined petroleum products.

(b) Commission approval

(1) No transfer of contractual interests authorized by the rule required under subsection (a)(1) of this section may take effect unless the Commission issues a certificate of public convenience and necessity for such transfer if such natural gas is to be resold by the person to whom such contractual interests are to be transferred. Such certificate shall be issued by the Commission in accordance with the requirements of this subsection and those of section 7 of the Natural Gas Act [15 U.S.C. 717f], and the provisions of such Act [15 U.S.C. 717 et seq.] applicable to the determination of satisfaction of the public convenience and necessity requirements of such section.

(2) The rule required under subsection (a)(1) of this section shall set forth guidelines for the application on a regional or national basis (as the Commission determines appropriate) of the criteria specified in subsection (e)(2) and (3) of this section to determine the maximum consideration permitted as just compensation under this section.

(c) Restrictions on transfers unenforceable

Any provision of any contract, which provision prohibits any transfer of any contractual interests thereunder, or any commingling or transportation of natural gas subject to such contract with natural gas the sale for resale or transportation of which is subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.], or terminates such contract on the basis of any such transfer, commingling, or transportation, shall be unenforceable in any court of the United States and in any court of any State if applied with respect to any transfer approved under the rule required under subsection (a)(1) of this section.

(d) Contractual obligations unaffected

The person acquiring contractual interests transferred pursuant to the rule required under subsection (a)(1) of this section shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This section shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) Definitions

For purposes of this section—

(1) The term "natural gas" has the same meaning as provided by section 2(5) of the Natural Gas Act [15 U.S.C. 717a(5)].

(2) The term "just compensation", when used with respect to any contractual interests pursuant to the rule required under subsection (a)(1) of this section, means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (not including capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1) of this section, in direct association with the use of heavy petroleum fuel oil as a fuel in the applicable facility, exceeds

(B) the price under such contract for natural gas, subject to such contract, delivered during such period.

For purposes of subparagraph (A), the reasonable costs directly associated with the use of heavy petroleum fuel oil as a fuel shall include an allowance for the amortization, over

the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such facility, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such heavy petroleum fuel oil.

(3) The term "just compensation", when used with respect to any intrastate pipeline which would have transported or distributed natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1) of this section, means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1) of this section, to the extent such loss—

(A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to the rule required under subsection (a)(1) of this section; and

(B) is not offset by—

(i) a reduction in expenses associated with such discontinuation; and

(ii) revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(4) The term "contractual interests" means the right to receive natural gas under contract as affected by an applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(5) The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.].

(6) The term "high-priority use" means any use of natural gas (other than its use for the generation of steam for industrial purposes or electricity) identified by the Commission as a high priority use for which the Commission determines a substitute fuel is not reasonably available.

(7) The term "heavy petroleum fuel oil" means number 4, 5, or 6 fuel oil which is domestically refined.

(8) The term "local distribution company" means any person, other than any intrastate pipeline or any interstate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(9) The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act.

(10) The term "facility" means any electric powerplant, or major fuel burning installation, as such terms are defined in the Powerplant and Industrial Fuel Use Act of 1978 [42 U.S.C. 8301 et seq.].

(11) The term "curtailment plan" means a plan (including any modification of such plan required by the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.]), in effect under the Natural Gas Act or State law, which provides for recognizing and implementing priorities of service during periods of curtailed deliveries by any local distribution company, intrastate pipeline, or interstate pipeline.

(12) The term "interstate commerce" has the same meaning as such term has under the Natural Gas Act.

(f) Coordination with this chapter

(1) Consideration in any transfer of contractual interests pursuant to the rule required under subsection (a)(1) of this section shall be deemed just and reasonable for purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d] if such consideration does not exceed just compensation.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] as a natural gas-company (within the meaning of such Act) or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1) of this section.

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale, or person is subject to the jurisdiction of the Commission under such Act without regard to the transfer of contractual interests pursuant to the rule required under subsection (a)(1) of this section.

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the sale in interstate commerce for resale or the transportation in interstate commerce of natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1) of this section.

(g) Volume limitation

No supplier of natural gas under any contract, with respect to which contractual interests have been transferred pursuant to the rule required under subsection (a)(1) of this section, shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests pursuant to the rule required under subsection (a)(1) of this section, if no such transfer had occurred; and

(3) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests.

(Pub. L. 95–617, title VI, § 606, Nov. 9, 1978, 92 Stat. 3167.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (a)(2)(A), (b)(1), (c), (e)(5), (9), (11), (12), (f)(2), (3), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to this chapter (§ 717 et seq.). For complete classification of this Act to the Code, see section 717w of this title and Tables.

The Powerplant and Industrial Fuel Use Act of 1978, referred to in subsec. (e)(11), is Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3291, which is classified principally to chapter 92 (§ 8301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 42 and Tables.

The Natural Gas Policy Act of 1978, referred to in subsec. (e)(11), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§ 3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

CODIFICATION

Section is a part of the Public Utility Regulatory Policies Act of 1978, and not a part of the Natural Gas Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 717z of this title.

§ 717z. Emergency conversion of utilities and other facilities

(a) Presidential declaration

The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

(1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and

(2) the exercise of authorities under this section is reasonably necessary, having exhausted other alternatives (not including section 3363 of this title) to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) Limitation

(1) Any declaration of a natural gas supply emergency (or extension thereof) under subsection (a) of this section, shall terminate at the earlier of—

(A) the date on which the President finds that any shortage described in subsection (a) of this section does not exist or is not imminent; or

(B) 120 days after the date of such declaration of emergency (or extension thereof).

(2) Nothing in this subsection shall prohibit the President from extending, under subsection (a) of this section, any emergency (or extension thereof) previously declared under subsection (a) of this section, upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

(c) Prohibitions

During a natural gas emergency declared under this section, the President may, by order, prohibit the burning of natural gas by any electric powerplant or major fuel-burning installation if the President determines that—

(1) such powerplant or installation had on September 1, 1977 (or at any time thereafter) the capability to burn petroleum products without damage to its facilities or equipment and without interference with operational requirements;

(2) significant quantities of natural gas which would otherwise be burned by such powerplant or installation could be made available before the termination of such emergency to any person served by an interstate pipeline for use by such person in a high-priority use; and

(3) petroleum products will be available for use by such powerplant or installation throughout the period the order is in effect.

(d) Limitations

The President may specify in any order issued under this section the periods of time during which such order will be in effect and the quantity (or rate of use) of natural gas that may be burned by an electric powerplant or major fuel-burning installation during such period, including the burning of natural gas by an electric powerplant to meet peak load requirements. No such order may continue in effect after the termination or expiration of such natural gas supply emergency.

(e) Exemption for secondary uses

The President shall exempt from any order issued under this section the burning of natural gas for the necessary processes of ignition, startup, testing, and flame stabilization by an electric powerplant or major fuel-burning installation.

(f) Exemption for air-quality emergencies

The President shall exempt any electric powerplant or major fuel-burning installation in whole or in part, from any order issued under this section for such period and to such extent as the President determines necessary to alleviate any imminent and substantial endangerment to the health of persons within the meaning of section 7603 of title 42.

(g) Limitation on injunctive relief

(1) Except as provided in paragraph (2), no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued under this section unless such relief is in connection with a final judgment entered with respect to such order.

(2)(A) On the petition of any person aggrieved by an order issued under this section, the United States District Court for the District of Columbia may, after an opportunity for a hearing before such court and on an appropriate showing, issue a preliminary injunction temporarily enjoining, in whole or in part, the implementation of such order.

(B) For purposes of this paragraph, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States, except that no writ of subpena under the authority of this section shall issue for witnesses outside of the District of Columbia at a greater distance than 100 miles from the place of holding court unless the permission of the District Court for the District of Columbia has

been granted after proper application and cause shown.

(h) Definitions

For purposes of this section—

(1) The terms "electric powerplant", "powerplant", "major fuel-burning installation", and "installation" shall have the same meanings as such terms have under section 8302 of title 42.

(2) The term "petroleum products" means crude oil, or any product derived from crude oil other than propane.

(3) The term "high priority use" means any—

(A) use of natural gas in a residence;

(B) use of natural gas in a commercial establishment in amounts less than 50 Mcf on a peak day; or

(C) any use of natural gas the curtailment of which the President determines would endanger life, health, or maintenance of physical property.

(4) The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

(i) Use of general terms

In applying the provisions of this section in the case of natural gas subject to a prohibition order issued under this section, the term "petroleum products" (as defined in subsection (h)(2) of this section) shall be substituted for the term "heavy petroleum fuel oil" (as defined in section 717y(e)(7) of this title) if the person subject to any order under this section demonstrates to the Commission that the acquisition and use of heavy petroleum fuel oil is not technically or economically feasible.

(Pub. L. 95-617, title VI, § 607, Nov. 9, 1978, 92 Stat. 3171.)

CODIFICATION

Section is a part of the Public Utility Regulatory Policies Act of 1978, and not a part of the Natural Gas Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 717y, 3363 of this title.

CHAPTER 15C—ALASKA NATURAL GAS TRANSPORTATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3312, 3313, 3319, 3331, 3343, 3348, 3431 of this title.

§§ 719b to 719e

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291 and 7293 of Title 42, The Public Health and Welfare.

§ 719f. Congressional review

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291 and 7293 of Title 42, The Public Health and Welfare.

CONGRESSIONAL APPROVAL OF PRESIDENTIAL DECISION ON ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Pub. L. 95-158, Nov. 8, 1977, 91 Stat. 1268, provided: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on September 22, 1977, and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with the Natural [National] Environmental Policy Act of 1969 [section 4321 et seq. of Title 42, The Public Health and Welfare]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 719b, 719c, 719d, 719e, 719g, 719h of this title; title 43 section 2008.

§ 719k. Equal access to facilities

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291 and 7293 of Title 42, The Public Health and Welfare.

CHAPTER 16A—EMERGENCY PETROLEUM ALLOCATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 766, 793, 796 of this title; title 42 sections 6263, 6272, 6391, 7193, 7194; title 43 sections 1337, 1353.

§ 753. Mandatory allocation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 754 to 758, 760 to 760g, 764 of this title; title 42 sections 6241, 6263, 6271, 7172.

§ 757. Oil pricing policy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 753, 758, 760a, 760g of this title; title 42 section 7172.

§ 760a. Conversion mechanism to standby authorities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 760f, 764 of this title; title 42 section 7172.

CHAPTER 16B—FEDERAL ENERGY ADMINISTRATION

SUBCHAPTER I—FEDERAL ENERGY ADMINISTRATION

Sec.

788. Use of commercial standards [New].

(a) General notice of proposed rulemaking.

(b) Promulgation of commercial standards.

Sec.
(c) Consultation with Attorney General and Chairman of Federal Trade Commission; impact of rules on competition.
(d) Rules relating to Administration procurement activities.
(e) Participation of Administration employees in organizations relating to promulgation of commercial standards.
(f) Definition.
789. Organizational conflicts [New].
(a) Information bearing on possible conflict of interest.
(b) Required finding that no conflict of interest exists or that conflicts have been avoided; mitigation of conflict when conflict is unavoidable.
(c) Rules and regulations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 798 of this title; title 42 sections 6273, 7194.

SUBCHAPTER I—FEDERAL ENERGY ADMINISTRATION

§ 761. Congressional declaration of purpose

EFFECTIVE AND TERMINATION DATES

Section 30 of Pub. L. 93-275, as amended by Pub. L. 94-332, June 30, 1976, 90 Stat. 784; Pub. L. 94-385, title I, § 112, Aug. 14, 1976, 90 Stat. 1132; Pub. L. 95-70, § 6, July 21, 1977, 91 Stat. 277, under which this chapter became effective sixty days after May 7, 1974, and was to terminate Sept. 30, 1978, was repealed by Pub. L. 95-91, title VII, § 709(a)(1), Aug. 4, 1977, 91 Stat. 607.

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-70, § 1, July 21, 1977, 91 Stat. 275, provided that: "This Act [enacting sections 788 and 789 of this title and amending sections 766 and 792 of this title, sections 6246, 6309, and 6881 of Title 42, The Public Health and Welfare, and notes under this section] may be cited as the 'Federal Energy Administration Authorization Act of 1977'."

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and the functions vested by law in the Administration or in its Administrator, officers, and components were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

AUTHORIZATION OF APPROPRIATIONS

Section 29 of Pub. L. 93-275, as amended by Pub. L. 94-385, title I, § 110, Aug. 14, 1976, 90 Stat. 1130; Pub. L. 95-70, § 2, July 21, 1977, 91 Stat. 275, provided that:

"(a) There are authorized to be appropriated to the Federal Energy Administration the following sums:

"(1) subject to the restrictions specified in subsection (b), to carry out the functions identified as assigned to Executive Direction and Administration of the Federal Energy Administration as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed $35,627,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $41,017,000.

"(2) to carry out the functions identified as assigned to the Office of Energy Information and Analysis as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed $34,971,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $43,544,000.

"(3) to carry out the functions identified as assigned to the Office of Regulatory Programs as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed $62,459,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $62,459,000.

"(4) to carry out the functions identified as assigned to the Office of Conservation and Environment as of January 1, 1977 (other than functions described in part A [section 6861 et seq. of Title 42, The Public Health and Welfare] and part D [section 6881 et seq. of Title 42] of title IV of the Energy Conservation and Production Act, parts B [section 6291 et seq. of Title 42] and C [section 6321 et seq. of Title 42] of title III of the Energy Policy and Conservation Act and, for the fiscal year ending September 30, 1977, functions described in title II of the Energy Conservation and Production Act [section 6801 et seq. of Title 42] and in paragraph (7) of this subsection)—

"(A) for the fiscal year ending September 30, 1977, not to exceed $38,603,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $46,908,000.

"(5) to carry out the functions identified as assigned to the Office of Energy Resource Development as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed $16,934,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $26,017,000.

"(6) to carry out the functions identified as assigned to the Office of International Energy Affairs as of January 1, 1977—

"(A) for the fiscal year ending September 30, 1977, not to exceed $1,921,000; and

"(B) for the fiscal year ending September 30, 1978, not to exceed $1,846,000.

"(7) subject to the restriction specified in subsection (c), to carry out a program to develop the policies, plans, implementation strategies, and program definitions for promoting accelerated utilization and widespread commercialization of solar energy and to provide overall coordination of Federal solar energy commercialization activities, for the fiscal year ending September 30, 1977, not to exceed $2,500,000.

"(8) for the purpose of permitting public use of the Project Independence Evaluation System pursuant to section 31 of this Act [section 787 of this title], not to exceed the aggregate amount of the fees estimated to be charged for such use.

"(b) The following restrictions shall apply to the authorization of appropriations specified in paragraph (1) of subsection (a)—

"(1) amounts to carry out the functions identified as assigned to the Office of Communication and Public Affairs as of January 1, 1977, shall not exceed $2,112,000 for the fiscal year ending September 30, 1977; and

"(2) no amounts authorized to be appropriated in such paragraph may be used to carry out the functions identified as assigned to the Office of Nuclear Affairs as of January 1, 1976.

"(c) No amounts authorized to be appropriated in paragraphs (5) (B) and (7) of subsection (a) may be used to carry out solar energy research, development, or demonstration activities.

"(d) Subject to the provisions of any other law enacted after the date of the enactment of this subsection [July 21, 1977], if any function for which funds are authorized to be appropriated by this section is transferred by or pursuant to any such provision of law to any department, agency, or office, the unexpended balances of appropriations, authorizations, allocations, and other funds, held, used, arising from, available to, or to be made available in connection with such function shall be transferred to such department, agency, or office, but shall continue to be subject to any restriction to which they were subject before such transfer."

EX. ORD. NO. 11790. EFFECTUATION OF CHAPTER

Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, provided:

Under and by virtue of the authority vested in me by the Federal Energy Administration Act of 1974 (Public Law 93-275) [this chapter], the Emergency Petroleum Allocation Act of 1973 (Public Law 93-159; 87 Stat. 627) [15 U.S.C. § 751 et seq.], the Economic Stabilization Act of 1970, as amended [12 U.S.C. § 1904 note), the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. Pursuant to the authority vested in me by section 30 of the Federal Energy Administration Act of 1974 [set out as a note under this section], notice is hereby given that that act shall be effective as of June 27, 1974.

SEC. 2. (a) There is hereby delegated to the Secretary of Energy (hereinafter referred to as the "Secretary"), all authority vested in the President by the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. § 751 et seq.].

(b) The Secretary shall submit to the Congress the reports required by section 4(c)(2) of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. § 753(c)(2)].

SEC. 3. (a) There is hereby delegated to the Secretary the authority vested in the President by section 203(a)(3) of the Economic Stabilization Act of 1970, as amended [12 U.S.C. § 1904 note], to the extent such authority remains available under the provisions of section 218 of that act [12 U.S.C. § 1904 note].

(b) The authority under the Economic Stabilization Act of 1970, as amended [12 U.S.C. § 1904 note], that was delegated to the Administrator of the Federal Energy Office by the Chairman of the Cost of Living Council pursuant to section 4(b) of Executive Order No. 11748 of December 4, 1973 [set out as a note under section 754 of this title], is hereby transferred to the Secretary to the extent such authority remains available under the provisions of section 218 of that act [12 U.S.C. § 1904 note].

SEC. 4. Notwithstanding the provisions of Executive Order No. 10480, as amended [set out as a note under section 2153 of Title 50, Appendix, War and National Defense], the Secretary is authorized to exercise the authority vested in the President by the Defense Production Act of 1950, as amended [50 App. U.S.C. § 2061 et seq.], except section 708 thereof [50 App. U.S.C. § 2158], as it relates to the production, conservation, use, control, distribution, and allocation of energy, without approval, ratification, or other action of the President or any other official of the executive branch of the Government.

SEC. 5. (a) The Federal Energy Office established by Executive Order No. 11748 is hereby abolished, and that Executive order is hereby revoked.

(b) The authority vested in the Administrator of the Federal Energy Office to appoint a Deputy Administrator of that Office and to compensate that officer at the rate prescribed for officers and positions at level III of the Executive Schedule (5 U.S.C. 5314) is hereby revoked.

(c) All orders, regulations, circulars, or other directives issued and all other actions taken pursuant to any authority delegated or transferred to the Secretary by this order prior to and in effect on the date of this order are hereby confirmed and ratified, and shall remain in full force and effect, as if issued under this order, unless or until altered, amended, or revoked by the Secretary or by such competent authority as he may specify.

(d) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions of the Administrator of the Federal Energy Office, as Administrator of that Office or as Chairman of the Oil Policy Committee, are hereby transferred to the Secretary.

SEC. 6. All authority delegated or transferred to the Secretary by this order may be further delegated, in whole or in part, by the Secretary to any other office or any department or agency of the United States, or, if authorized by law, to any State or officer thereof.

SECS. 7 to 10. [Deleted.]

§ 762. Establishment

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and the functions vested by law in the Administration or in its Administrator, officers and components were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 763. Repealed. Pub. L. 95-91, title VII, § 709(a)(1), Aug. 4, 1977, 91 Stat. 607

Section, Pub. L. 93-275, § 4, May 7, 1974, 88 Stat. 97, related to officers of the Federal Energy Administration.

§§ 764, 765

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 766. Administrative provisions

(a) Rules, regulations, and procedures; Environmental Protection Agency, notification; quality of environment, publication of comments; emergency preclusion of review by Environmental Protection Agency

The Administrator may promulgate such rules, regulations, and procedures as may be necessary to carry out the functions vested in him: *Provided*, That:

(1) The Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

(2) The review required by paragraph (1) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires making effective the action proposed to be taken at a date earlier than would permit the Administrator of the Environmental Protection Agency the five working days opportunity for prior comment required by paragraph (1). Notice of any such waiver shall be given to the Administrator of the Environmental Protection Agency and filed with the Federal Register with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual

situation in such detail as the Administrator determines will apprise such agency and the public of the reasons for such waiver.

The review required by paragraphs (1) and (2) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires immediate action.

(b) Adjustments; procedures respecting application and operation; judicial review

Any officer or agency authorized to issue any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5, pursuant to this chapter shall provide for the making of such adjustments, consistent with the other purposes of this chapter, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rules, regulations, and orders. Such officer or agency shall, within ninety days after August 14, 1976, establish criteria and guidelines by which such special hardship, inequity, or unfair distribution of burdens shall be evaluated. Such officer or agency shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition. If any person is aggrieved or adversely affected by a denial of a request for adjustment under the preceding sentences, he may request a review of such denial by the agency and may obtain judicial review in accordance with subsection (c) of this section when such a denial becomes final. The agency shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial, and where deemed advisable by the agency, for considering other requests for action under this paragraph, except that no review of a denial under this subparagraph shall be controlled by the same officer denying the adjustment pursuant to this subparagraph.

(c) Judicial review of administrative rulemaking; filing of petition in United States Court of Appeals

Judicial review of administrative rulemaking of general and national applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.], may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule, regulation, or order, and judicial review of administrative rulemaking of general, but less than national, applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973, may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule, regulation, or order, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule, regulation, or order is to have effect.

(d) to (k) Repealed or redesignated. Pub. L. 95-91, title VII, § 709(a)(2)(B), (C), (F), (G), Aug. 4, 1977, 91 Stat. 608

(l) Authority and responsibility of General Counsel

Effective beginning July 1, 1977, amounts authorized to be appropriated under this chapter or any other Act shall not be available for the payment of salaries and other expenses with respect to any office of regional counsel of the Administration unless such office is under the direct supervision and control of the General Counsel of the Administration.

(As amended Pub. L. 95-70, § 8, July 21, 1977, 91 Stat. 277; Pub. L. 95-91, title VII, § 709(a)(2), Aug. 4, 1977, 91 Stat. 607.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-91, § 709(a)(2)(A), struck out subsec. (a) provisions: for appointment, employment, and compensation of officers and employees; for prescription of their authority and duties; for placement of specified number of positions in GS-16, 17, and 18 and making competitive service provisions inapplicable to a limited number of such positions; and making classification standards and procedures applicable to the authority provided for in this section and for duration of such authority; and redesignated former subsec. (c) as (a).

Subsec. (b). Pub. L. 95-91, § 709(a)(2)(A), (C) to (E), struck out subsec. (b) provisions respecting employment and compensation of experts and consultants, redesignated former subsec. (i)(1)(D) as (b), and substituted therein "any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5 pursuant to this chapter" for "the rules, regulations, or orders described in paragraph (A)" and "subsection (c) of this section" for "paragraph (2) of this subsection".

Subsec. (c). Pub. L. 95-91, § 709(a)(2)(F), redesignated former subsec. (i)(2)(A) as (c). Former subsec. (c) redesignated (a).

Subsecs. (d) to (h). Pub. L. 95-91, § 709(a)(2)(B), struck out subsecs. (d) to (h) relating to: interagency cooperation and reimbursement; seal and judicial notice; acceptance of gifts; contract authority; and performance of other necessary activities.

Subsec. (i)(1)(A) to (C). Pub. L. 95-91, § 709(a)(2)(C), struck out subpar. (A) to (C) provisions relating to: application of subch. II of ch. 5 of title 5 to rules, regulations, or orders issued under this chapter; publication of notice of proposed rules, regulations, or orders in the Federal Register and opportunity for comment and waiver of the requirements when warranted by considerations of public health, safety, or welfare; and opportunity for oral presentation of views, data, and arguments where rules, regulations, or orders are likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

Subsec. (i)(1)(D). Pub. L. 95-91, § 709(a)(2)(C), redesignated subpar. (D) as subsec. (b).

Subsec. (i)(E), (F). Pub. L. 95-91, § 709(a)(2)(C), struck out provisions of subpars. (E) and (F) providing for public availability of internal rules and guidelines of the agency forming a basis for rules, regulations, or orders and agency opinions respecting determinations of requests for exception or exemption from rules or orders; and procedures for holding hearings or oral presentation of views with respect to rules or regulations the effects of which are confined to a single unit of local government or the residents thereof, a single

geographic area within a State or the residents thereof, or a single State or the residents thereof.

Subsec. (i)(2)(A). Pub. L. 95–91, § 709(a)(2)(F), redesignated subpar. (A) as subsec. (c).

Subsec. (i)(2)(B), (3). Pub. L. 95–91, § 709(a)(2)(F), (G), struck out par. (2)(B) provisions relating to jurisdiction of federal district courts, power of courts of competent jurisdiction to consider defenses, removal of cases raising constitutional defenses, and concurrent jurisdiction of cases or controversies arising under rules, regulations, or orders of State or local government agencies; and par. (3) provisions relating to procedures for State or local government agencies.

Subsecs. (j), (k). Pub. L. 95–91, § 709(a)(2)(G), struck out subsecs. (j) and (k) relating to information for independent regulatory agencies and limitation on enforcement authority of the Administrator.

Subsec. (*l*). Pub. L. 95–70 added subsec. (*l*).

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 767. Transitional and savings provisions

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 768. Repealed. Pub. L. 95–91, title VII, § 709(a)(1), Aug. 4, 1977, 91 Stat. 607

Section, Pub. L. 93–275, § 9, May 7, 1974, 88 Stat. 105, related to incidental transfers of personnel, assets, liabilities, contracts, etc., by the Director of the Office of Management and Budget necessary and appropriate to accomplish the intent and purpose of this chapter.

§ 770. Appointments

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 771. Comptroller General, powers and duties

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

The functions of the Comptroller General of the United States under this section were made applicable with respect to the monitoring and evaluation of all functions and activities of the Department of Energy by section 7137 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6892, 7137.

§ 772. Administrator's information-granting power

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 774, 790, 3418 of this title; title 42 section 6274.

§ 773. Public disclosure of information

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 774. Reports and recommendations

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 5819, 7267.

§ 776. Advisory committees

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 6273, 7234; title 50 App. section 2158a.

§§ 777 to 785

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 786. Repealed. Pub. L. 95–91, title VII, § 709(a)(1), Aug. 4, 1977, 91 Stat. 607

Section, Pub. L. 93–275, § 28, May 7, 1974, 88 Stat. 115, provided that upon termination of this chapter, any functions or personnel transferred by this chapter shall revert to the department, agency, or office from which they were transferred.

§ 787. Project Independence evaluation system documentation; access to model by Congress and public

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator

thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 788. Use of commercial standards

(a) General notice of proposed rulemaking

If any proposed rule by the Administrator contains any commercial standards, or specifically authorizes or requires the use of any such standards, then any general notice of the proposed rulemaking shall—

(1) identify, by name, the organization which promulgated such standards; and

(2) state whether or not, in the judgment of the Administrator, such organization complied with the requirements of subsection (b) of this section in the promulgation of such standards.

(b) Promulgation of commercial standards

An organization complies with the requirements of this subsection in promulgating any commercial standards if—

(1) it gives interested persons adequate notice of the proposed promulgation of the standards and an opportunity to participate in the promulgation process through the presentation of their views in hearings or meetings which are open to the public;

(2) the membership of the organization at the time of the promulgation of the standards is sufficiently balanced so as to allow for the effective representation of all interested persons;

(3) before promulgating such standards, it makes available to the public any records of proceedings of the organization, and any documents, letters, memorandums, and materials, relating to such standards; and

(4) it has procedures allowing interested persons to—

(A) obtain a reconsideration of any action taken by the organization relating to the promulgation of such standards, and

(B) obtain a review of the standards (including a review of the basis or adequacy of such standards).

(c) Consultation with Attorney General and Chairman of Federal Trade Commission; impact of rules on competition

The Administrator shall not incorporate within any rule, nor prescribe any rule specifically authorizing or requiring the use of, any commercial standards unless he has consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of such standards on competition and neither such individual recommends against such incorporation or use.

(d) Rules relating to Administration procurement activities

The foregoing provisions of this section shall not apply with respect to rules prescribed by the Administrator which relate to the procurement activities of the Administration.

(e) Participation of Administration employees in organizations relating to promulgation of commercial standards

Not later than 90 days after July 21, 1977, the Administrator shall prescribe, by rule, guidelines or criteria which set forth the extent to which, and the terms and conditions under which, employees of the Administration may participate in their official capacity in the activities of any organization (which is not a Federal entity) which relate to the promulgation of commercial standards. Such guidelines and criteria may allow for such participation if it is in the public interest and relates to the purposes of this chapter, but in no event may such employees who are participating in their official capacity be allowed under such guidelines or criteria to vote on any matter relating to commercial standards.

(f) Definition

As used in this section, the term "commercial standards" means—

(1) specifications of materials;

(2) methods of testing;

(3) criteria for adequate performance or operation;

(4) model codes;

(5) classification of components;

(6) delineation of procedures or definition of terms;

(7) measurement of quantity or quality for evaluating or referring to materials, products, systems, services, or practices; or

(8) similar rules, procedures, requirements, or standards;

which are promulgated by any organization which is not a Federal entity. For purposes of the preceding sentence, any revision by any such organization of any such rule, procedure, requirement, or standard shall be considered to be the same as the promulgation of such standard.

(Pub. L. 93–275, § 32, as added Pub. L. 95–70, § 9, July 21, 1977, 91 Stat. 278.)

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 789. Organizational conflicts

(a) Information bearing on possible conflict of interest

The Administrator shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation, under this chapter or any other law administered by him for the conduct of research, development, evaluation activities, or for technical and management support services, to provide the Administrator, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Administrator, bearing on whether that person has a possible conflict of interest with respect to—

(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or

(2) being given an unfair competitive advantage.

Such person shall insure, in accordance with regulations prescribed by the Administrator, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract of more than $10,000.

(b) Required finding that no conflict of interest exists or that conflicts have been avoided; mitigation of conflict when conflict is unavoidable

The Administrator shall not enter into any such contract, agreement, or arrangement unless he finds, after evaluating all information provided under subsection (a) of this section and any other information otherwise available to him that—

(1) it is unlikely that a conflict of interest would exist, or

(2) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement;

except that if he determines that such conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Administrator may enter into such contract, agreement, or arrangement, if he determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

(c) Rules and regulations

The Administrator shall publish rules for the implementation of this section, in accordance with section 553 of title 5 (without regard to subsection (a)(2) thereof) as soon as practicable after July 21, 1977, but in no event later than 120 days after such date.

(Pub. L. 93-275, § 33, as added Pub. L. 95-70, § 10, July 21, 1977, 91 Stat. 279.)

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SUBCHAPTER II—OFFICE OF ENERGY INFORMATION AND ANALYSIS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 section 7135.

§ 790. Establishment of Office of Energy Information and Analysis

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

The functions assigned to the Director of the Office of Energy Information and Analysis under this subchapter were vested in the Administrator of the Energy Information Administration within the Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

§ 790a. National Energy Information System; information required to be maintained

(a) It shall be the duty of the Director to establish a National Energy Information System (hereinafter referred to in this chapter as the "System"), which shall be operated and maintained by the Office. The System shall contain such information as is required to provide a description of and facilitate analysis of energy supply and consumption within and affecting the United States on the basis of such geographic areas and economic sectors as may be appropriate to meet adequately the needs of—

(1) the Federal Energy Administration in carrying out its lawful functions;

(2) the Congress;

(3) other officers and employees of the United States in whom have been vested, or to whom have been delegated energy-related policy decisionmaking responsibilities; and

(4) the States to the extent required by the Natural Gas Act [15 U.S.C. 717 et seq.] and the Federal Power Act [16 U.S.C. 791a et seq.].

[See main edition for text of (b)]

(As amended Pub. L. 95-91, title VII, § 709(a)(3), Aug. 4, 1977, 91 Stat. 608.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(4), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

The Federal Power Act, referred to in subsec. (a)(4), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

AMENDMENTS

1977—Subsec. (a)(4). Pub. L. 95-91 added par. (4).

TRANSFER OF FUNCTIONS

The functions assigned to the Director of the Office of Energy Information and Analysis under this subchapter were vested in the Administrator of the Energy Information Administration within the Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 790b. Administrative provisions

TRANSFER OF FUNCTIONS

The functions assigned to the Director of the Office of Energy Information and Analysis under this subchapter were vested in the Administrator of the Energy Information Administration within the Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 7135.

§ 790c. Analysis and evaluation of energy information; establishment and maintenance by Director of professional, etc., capability; specific capabilities

TRANSFER OF FUNCTIONS

The functions assigned to the Director of the Office of Energy Information and Analysis under this subchapter were vested in the Administrator of the Energy Information Administration within the Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 790d. Annual performance audit review of procedures and methodology by Professional Audit Review Team

[See main edition for text of (a)]

(b) Membership, appointment and Chairman of Team

The Professional Audit Review Team shall consist of at least six professionally qualified persons who shall be officers or employees of the United States and of whom at least—

one shall be designated by the Chairman of the Council of Economic Advisers;

one shall be designated by the Commissioner of Labor Statistics;

one shall be designated by the Administrator of Social and Economic Statistics;

one shall be designated by the Chairman of the Securities and Exchange Commission;

one shall be designated by the Chairman of the Federal Trade Commission; and

one, who shall be the Chairman of the Professional Audit Review Team, shall be designated by the Comptroller General.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 95-91, title VII, § 709(a)(4), Aug. 4, 1977, 91 Stat. 608.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-91 reduced the minimum required number of professionally qualified persons for the Team to six from seven and struck out provision for designation of one person for the Team by the Chairman of the Federal Power Commission.

TRANSFER OF FUNCTIONS

The functions assigned to the Director of the Office of Energy Information and Analysis under this subchapter were vested in the Administrator of the Energy Information Administration within the Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291 and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 7135.

§ 790e. Coordination by Director of energy information gathering activities of Federal agencies

REFERENCES IN TEXT

Section 5818 of title 42, referred to in subsec. (c), was repealed by Pub. L. 95-91, title VII, § 709(b), Aug. 4, 1977, 91 Stat. 608.

TRANSFER OF FUNCTIONS

The functions assigned to the Director of the Office of Energy Information and Analysis under this subchapter were vested in the Administrator of the Energy Information Administration within the Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§§ 790f, 790g

TRANSFER OF FUNCTIONS

The functions assigned to the Director of the Office of Energy Information and Analysis under this subchapter were vested in the Administrator of the Energy Information Administration within the Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 790h. Congressional access to energy information; disclosure by Congress

TRANSFER OF FUNCTIONS

The functions assigned to the Director of the Office of Energy Information and Analysis under this subchapter were vested in the Administrator of the Energy Information Administration within the Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 7135.

CHAPTER 16C—ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 16 section 2643; title 42 sections 6274, 7194, 7410, 7411, 7473.

§ 792. Coal conversion and allocation

[See main edition for text of (a) to (e)]

(f) Expiration of authority; effective dates

(1) Authority to issue orders or rules under subsections (a) through (d) of this section shall expire at midnight, December 31, 1978. Such a rule or order may take effect at any time before January 1, 1985.

[See main edition for text of (2)]

(As amended Pub. L. 95-70, § 7, July 21, 1977, 91 Stat. 277.)

REFERENCES IN TEXT

Section 1857c-10 of title 42, referred to in subsec. (b)(2)(B) and (3)(B), was in the original a reference to

section 119 of the Clean Air Act, and was repealed by Pub. L. 95-95, § 112(b), which provided in part that references in this section to section 1857c-10 shall be construed to refer to section 7413(d) of title 42 and to paragraph (5) thereof in particular. For further details, see Compliance Orders note set out below.

AMENDMENTS

1977—Subsec. (f)(1). Pub. L. 95-70 substituted "shall expire at midnight, December 31, 1978" for "shall expire at midnight, June 30, 1977".

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

COMPLIANCE ORDERS

Pub. L. 95-95, title I, § 112(b), Aug. 7, 1977, 91 Stat. 709, repealed section 119 of the Clean Air Act, which was classified to section 1857c-10 of Title 42, The Public Health and Welfare, and which related to the Administrator's authority to deal with the energy shortage. Section 112(b) of Pub. L. 95-95 provided that:

"(1) Section 119 of such Act [section 1857c-10 of Title 42, The Public Health and Welfare] is hereby repealed. All references to such section 119 [section 1857c-10 of Title 42] or subsections thereof in section 2 of the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93-319) [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93-319, June 22, 1974, 88 Stat. 246], shall be construed to refer to section 113(d) of the Clean Air Act [section 7413(d) of Title 42] and to paragraph (5) thereof in particular. Any certification or notification required to be given by the Administrator of the Environmental Protection Agency under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act, shall be given only when the Governor of the State in which is located the source to which the proposed order under section 113(d)(5) of the Clean Air Act [section 7413(d)(5) of Title 42] is to be issued gives his prior written concurrence.

"(2) In the case of any major stationary source to which any requirement is applicable under section 113(d)(5)(B) of the Clean Air Act [section 7413(d)(5)(B) of Title 42] and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93-319], the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such source will be able to comply with all such requirements. In the case of any plant or installation which the Administrator of the Environmental Protection Agency determines (after consultation with the State) will not be subject to an order under section 113(d) of the Clean Air Act [section 7413(d) of Title 42] and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93-319], the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such plant or installation will be able to burn coal in compliance with all applicable emission limitations under the implementation plan.

"(3) Any certification required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93-319], or under this subsection may be provided in an order under section 113(d) of the Clean Air Act [section 7413(d) of Title 42]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 793, 797 of this title; title 42 sections 7411, 7413, 7420, 7473, 8402, 8461, 8472, 8482.

§ 793. Protection of public health and environment

[See main edition for text of (a), (b)]

(c) Major Federal actions significantly affecting the quality of the human environment

(1) No action taken under the Clean Air Act [42 U.S.C. 7401 et seq.] shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

[See main edition for text of (c)(2), (d)]

REFERENCES IN TEXT

Section 119 of the Clean Air Act [42 U.S.C. 1857c-10], referred to in subsec. (b), was repealed by Pub. L. 95-95, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709, which is set out as a Compliance Orders note under section 792 of this title. A new section 119 of the Clean Air Act was added by Pub. L. 95-95, § 117(b), and is classified to section 7419 of Title 42, The Public Health and Welfare.

The Clean Air Act, referred to in subsec. (c), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act of the Code, see short Title note set out under section 7401 of Title 42 and Tables.

CODIFICATION

Subsec. (c)(1) is set out in this supplement to reflect the current citation for the Clean Air Act, which was reclassified to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare, on enactment of Pub. L. 95-95.

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291 and 7293 of Title 42, The Public Health and Welfare.

§ 794. Energy conservation study

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 796. Reporting of energy information

[See main edition for text of (a) to (f)]

(g) Independent nature of authority to gather energy information

The authority contained in this section is in addition to, independent of, not limited by, and

not in limitation of, any other authority of the Federal Energy Administrator.

(As amended Pub. L. 95-620, title VII, § 762(d), Nov. 9, 1978, 92 Stat. 3346.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95-620 deleted provisions comprising former par. (2) relating to termination of this section at midnight, Dec. 31, 1979, and designated remaining provisions as subsec. (g).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of Title 42, The Public Health and Welfare.

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291 and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 772, 790, 797, 2008, 3418 of this title; title 16 section 2703; title 42 sections 5917, 6274, 6296, 6299, 6346, 6381, 7135, 8401, 8421, 8481.

§ 797. Enforcement

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 790 of this title; title 16 section 2643.

§ 798. Definitions

(a) For purposes of this chapter and the Clean Air Act [42 U.S.C. 7401 et seq.] the term "Federal Energy Administrator" means the Administrator of the Federal Energy Administration established by Federal Energy Administration Act of 1974 [15 U.S.C. 761 et seq.]; except that until such Administrator takes office and after such Administration ceases to exist, such term means any officer of the United States designated as Federal Energy Administrator by the President for purposes of this chapter and section 119 of the Clean Air Act [42 U.S.C. 1857c-10]

[See main edition for text of (b)]

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see short Title note set out under section 7401 of Title 42 and Tables.

Section 119 of the Clean Air Act [42 U.S.C. 1857c-10], referred to in subsec. (a), was repealed by Pub. L. 95-95, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709, which is set out as a Compliance Orders note under section 792 of this title. A new section 119 of the Clean Air Act was added by Pub. L. 95-95, § 117(b), and is classified to section 7419 of Title 42, The Public Health and Welfare.

CODIFICATION

Subsec. (a) is set out in this supplement to reflect the current citation for the Clean Air Act, which was reclassified to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare, on enactment of Pub. L. 95-95.

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

CHAPTER 21—NATIONAL POLICY ON EMPLOYMENT AND PRODUCTIVITY

Sec.

1022a. Medium-term economic goals and policies respecting full employment and balanced growth [New].
(a) Incorporation of necessary programs and policies.
(b) Interim numerical goals for initial Economic Reports.
(c) Achievement of full employment, balanced budget and zero inflation rate for succeeding Economic Reports.
(d) Review by President; report to Congress; modification of timetables.
(e) Interim numerical goals for succeeding Economic Reports.
(f) Action taken to reduce unemployment.
(g) Definitions.
1022b. Presentation of analysis respecting short-term and medium-term goals in Economic Report of President; mutually reinforcing means [New].
1022c. Inclusion of priority policies and programs in President's Budget [New].
1022d. President's Budget [New].
(a) Recommendations.
(b) Five-year projections of outlays and receipts.
(c) Inclusion in Economic Report of President; purposeful development of expenditure and revenue elements; considerations governing determination of size of President's expenditures and revenue proposals.
1022e. Inflation [New].
(a) Methods and requirements for achieving price stability.
(b) Coordination of fiscal or monetary policies with specific targeted policies.
(c) Policy initiation and recommendations; elements of structural policies.
1022f. Advisory board or boards [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3113, 3116, 3117, 3131, 3132 of this title; title 31 section 1322.

§ 1021. Congressional declarations

(a) The Congress declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means, consistent with its needs and obligations and other essential national policies, and with the assistance and cooperation of both small and larger businesses, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions which promote useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability as provided in section 1022b(b) of this title.

(b) The Congress further declares and establishes as a national goal the fulfillment of the right to full opportunities for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work.

(c) The Congress further declares that inflation is a major national problem requiring improved government policies relating to food, energy, improved and coordinated fiscal and monetary management, the reform of outmoded rules and regulations of the Federal Government, the correction of structural defects in the economy that prevent or seriously impede competition in private markets, and other measures to reduce the rate of inflation.

(d) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to improve the coordination and integration of the policies and programs of the Federal Government toward achievement of the objectives of such Act through better management, increased efficiency, and attention to long-range as well as short-range problems and to balancing the Federal budget.

(e) The Congress further declares that, although it is the purpose under the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to seek diligently and to encourage the voluntary cooperation of the private sector in helping to achieve the objectives of such Act, no provisions of such Act or this chapter shall be used, with respect to any portion of the private sector of the economy, to provide for Federal Government control of production, employment, allocation of resources, or wages and prices, except to the extent authorized under other Federal laws.

(f) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to maximize and place primary emphasis upon the expansion of private employment, and all programs and policies under such Act shall be in accord with such purpose. Toward this end, the effort to expand jobs to the full employment level shall be in this order of priority to the extent consistent with balanced growth—

(1) expansion of conventional private jobs through improved use of general economic and structural policies, including measures to encourage private sector investment and capital formation;

(2) expansion of private employment through Federal assistance in connection with the priority programs in such Act;

(3) expansion of public employment other than through the provisions of section 206 of such Act [15 U.S.C. 3116]; and

(4) when recommended by the President under section 206 of such Act [15 U.S.C. 3116] and subject to the limitations in such section, the creation of employment through the methods set forth in such section.

(g) The Congress further declares that trade deficits are a major national problem requiring a strong national export policy including improved Government policies relating to the promotion, facilitation, and financing of commercial and agricultural exports, Government policies designed to reduce foreign barriers to exports through international negotiation and agreement, Federal support for research, development, and diffusion of new technologies to promote innovation in agriculture, business, and industry, the elimination or modification of Government rules or regulations that burden or disadvantage exports and the national and international competitiveness of agriculture, business, and industry, the reexamination of antitrust laws and policies when necessary to enable agriculture, business, and industry to meet foreign competition in the United States and abroad, and the achievement of a free and fair international trading system and a sound and stable international monetary order.

(h) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to achieve a balanced Federal budget consistent with the achievement of the medium-term goals specified in section 1022a of this title.

(i) The Congress further declares that it is the continuing policy and responsibility of the Federal Government, in cooperation with State and local governments, to use all practical means consistent with other essential considerations of national policy to provide sufficient incentives to assure meeting the investment needs of private enterprise, including the needs of small and medium sized businesses, in order to increase the production of goods, the provision of services, employment, the opportunity for profit, the payment of taxes, and to reduce and control inflation. To the extent it is reasonably possible to do so, private enterprise investments in depressed urban and rural areas should be promoted to reduce the high levels of unemployment that exist there.

(j) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et

seq.] to rely principally on the private sector for expansion of economic activity and creation of new jobs for a growing labor force. Toward this end, it is the purpose of this chapter to encourage the adoption of fiscal policies that would establish the share of the gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities.

(As amended Oct. 27, 1978, Pub. L. 95-523, title I, § 102, 92 Stat. 1890.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsecs. (d), (e), (f), (h), and (j), is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

AMENDMENTS

1978—Pub. L. 95-523 designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, added provisions relating to promotion of balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, improvement in trade balance, and reasonable price stability, and added subsecs. (b) to (j).

STATEMENT OF PURPOSE

Section 101 of Pub. L. 95-523 provided that:

"It is the purpose of this title [enacting sections 1022a to 1022f of this title, amending sections 1021, 1022 and 1023 of this title and section 225a of Title 12, Banks and Banking, and enacting provisions set out as a note under section 225a of Title 12]—

"(1) to declare the general policies of this Act [see Short Title note under section 3101 of this title];

"(2) to provide an open process under which economic goals and policies are proposed, reviewed, and established;

"(3) to provide for yearly review of national economic policies to ensure their consistency with these goals to the maximum extent possible; and

"(4) to strengthen and supplement the purposes and policies of the Employment Act of 1946 [this chapter]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1022, 1023, 3117 of this title.

§ 1022. Economic Report of President; coverage; supplementary reports; reference to congressional joint committee; percentage rate of unemployment; definitions

(a) The President shall transmit to the Congress during the first twenty days of each regular session, with copies transmitted to the Governor of each State and to other appropriate State and local officials, an economic report (hereinafter in this chapter referred to as the "Economic Report") together with the annual report of the Council of Economic Advisers submitted in accord with section 1023(c) of this title, setting forth—

(1) the current and foreseeable trends in the levels of employment, unemployment, production, capital formation, real income, Federal budget outlays and receipts, productivity, international trade and payments, and prices, and a review and analysis of recent domestic and international developments affecting economic trends in the Nation;

(2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, and prices for the calendar year in which the Economic Report is transmitted and for the following calendar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, fiscal policies that would establish the share of an expanding gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities, a balanced Federal budget, adequate productivity growth, price stability, achievement of an improved trade balance, and proper attention to national priorities; and

(B) annual numerical goals as specified in subparagraph (A) for the three successive calendar years, designated as medium term goals;

(3) employment objectives for certain significant subgroups of the labor force, including youth, women, minorities, handicapped persons, veterans, and middle-aged and older persons; and

(4) a program for carrying out the policy declared in section 1021 of this title, together with such recommendations for legislation as the President may deem necessary or desirable.

[See main edition for text of (b) and (c)]

(d) For the purposes of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] the percentage rate of unemployment as[1] a percentage of the civilian labor force as set forth by the Bureau of Labor Statistics in the Department of Labor as computed under the procedures in effect as of October 27, 1978.

(e) For the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], the terms "inflation", "prices", and "reasonable price stability" refer to the rate of change or level of the consumer price index as set forth by the Bureau of Labor Statistics, United States Department of Labor.

(As amended Oct. 27, 1978, Pub. L. 95-523, title I, § 103, 92 Stat. 1892.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsecs. (d) and (e), is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

CODIFICATION

In subsec. (a), "section 1023(c) of this title" in the original read "section 11(c) of this Act", which is classified to section 1024(c) of this title. The citation has been editorially translated as indicated to reflect the probable intent of Congress because the reporting requirements appear in section 10(c) of the Act, which is classified to section 1023(c) of this title.

[1] So in original. Probably should read "is".

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-523, § 103(a), among other changes, added provisions relating to the annual report of the Council of Economic Advisers and the inclusion in the President's Economic Report of annual numerical goals for employment, unemployment, production etc., and employment objectives for certain subgroups and struck out provisions relating to the review of the Federal Government's economic program and economic conditions affecting employment in the United States.

Subsecs. (d), (e). Pub. L. 95-523, § 103(b), added subsecs. (d) and (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1022a, 1022d, 1022e, 3116, 3132 of this title; title 12 section 225a; title 31 sections 1322, 1326.

§ 1022a. Medium-term economic goals and policies respecting full employment and balanced growth

(a) Incorporation of necessary programs and policies

In each Economic Report after October 27, 1978, the President shall incorporate (as part of the five-year numerical goals in each Economic Report) medium-term annual numerical goals specified in section 1022(a)(2)(B) of this title, and in each President's Budget submitted immediately prior thereto, the President shall incorporate the programs and policies the President deems necessary to achieve such medium-term goals and a balanced Federal budget and to achieve reasonable price stability as rapidly as feasible as provided for in section 1022b(b) of this title.

(b) Interim numerical goals for initial Economic Reports

The medium-term goals in the first three Economic Reports and, subject to the provisions of subsection (d) of this section, in each Economic Report thereafter shall include (as part of the five-year goals in each Economic Report) interim numerical goals for—

(1) reducing the rate of unemployment, as set forth pursuant to section 1022(d) of this title, to not more than 3 per centum among individuals aged twenty and over and 4 per centum among individuals aged sixteen and over within a period not extending beyond the fifth calendar year after the first such Economic Report; and

(2) reducing the rate of inflation, as set forth pursuant to section 1022(e) of this title, to not more than 3 per centum within a period not extending beyond the fifth calendar year fter the first such Economic Report: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

For purposes of this subsection, the first Economic Report shall be the Report issued in the first calendar year after October 27, 1978.

(c) Achievement of full employment, balanced budget and zero inflation rate for succeeding Economic Reports

(1) Upon achievement of the 3 and 4 per centum goals specified in subsection (b)(1) of this section, each succeeding Economic Report shall have the goal of achieving as soon as practicable and maintaining thereafter full employment and a balanced budget.

(2) Upon achievement of the 3 per centum goal specified in subsection (b)(2) of this section, each succeeding Economic Report shall have the goal of achieving by 1988 a rate of inflation of zero per centum: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

(d) Review by President; report to Congress; modification of timetables

In the second Economic Report after October 27, 1978, the President shall review the numerical goals and timetables for the reduction of unemployment and inflation and the goal of balancing the Federal budget; report to the Congress on the degree of progress being made, the programs and policies being used, and any obstacles to achieving such goals and timetables; and, if necessary, propose corrective economic measures toward achievement of such goals and timetables: *Provided*, That beginning with the second Report and in any subsequent Reports, if the President finds it necessary, the President may recommend modification of the timetable or timetables for the achievement of the goals provided for in subsection (b) of this section and the annual numerical goals to make them consistent with the modified timetable or timetables, and the Congress may take such action as it deems appropriate consistent with title III of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3131 et seq.]

(e) Interim numerical goals for succeeding Economic Reports

If, after achievement of the 3 and 4 per centum goals specified in subsection (b) of this section, the unemployment rate for a year as set forth pursuant to section 1022(d) of this title is more than 3 per centum among individuals aged twenty and over or more than 4 per centum among individuals aged sixteen and over, the next Economic Report after such rate is set forth and each succeeding Economic Report shall include (as part of the five-year goals in each Economic Report) the interim numerical goal of reducing unemployment to not more than the levels specified in subsection (b)(1) of this section as soon as practicable but not later than the fifth calendar year after the first such Economic Report, counting as the first calendar year the year in which such Economic Report is issued: *Provided*, That, if the President finds it necessary, the President may, under the authority provided in subsection (d) of this section, recommend modification of the timetable provided for in this subsection for the reduction of unemployment, and for the purposes of section 304 of the Full Employment and Balanced Growth Act of 1978, such recommendation by the President shall be treated as a recommendation made under subsection (d) of this section.

(f) Action taken to reduce unemployment

(1) In taking action to reduce unemployment in accord with the numerical goals and timeta-

ble established under subsection (b) of this section, every effort shall be made to reduce those differences between the rates of unemployment among youth, women[1] minorities, handicapped persons, veterans, middle-aged and older persons and other labor force groups and the overall rate of unemployment which are caused by any improper factors with the ultimate objective of removing such differentials to the extent possible.

(2) Insofar as the differences specified in the preceding paragraph are due to lack of training and skills, occupational practices, and other relevant factors, the Secretary of Labor shall—

(A) take such action as practicable to achieve the objectives of this subsection;

(B) make studies, develop information, and make recommendations toward remedying these differences in rates of unemployment, and include these in the annual Employment and Training Report of the President required under section 705(a) of the Comprehensive Employment and Training Act of 1973 (hereinafter in this chapter referred to as "CETA"); and

(C) make recommendations, as deemed necessary, to the Congress related to the objectives of this paragraph.

(g) Definitions

(1) The term "middle-aged and older persons" as used in this section includes any individual forty-five years of age or older.

(2) For purposes of this subsection,[2] the term "veteran" shall mean the same as defined in section 2011(1) or (2)(A) of title 38.

(Feb. 20, 1946, ch. 33, § 4, as added Oct. 27, 1978, Pub. L. 95-523, title I, § 104, 92 Stat. 1893.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (d), is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, as amended. Title III of the Full Employment and Balanced Growth Act of 1978 is classified principally to subchapter II (§ 3131 et seq.) of chapter 58 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

Section 304 of the Full Employment and Balanced Growth Act of 1978, referred to in subsec. (e), is Pub. L. 95-523, § 304, Oct. 27, 1978, 92 Stat. 1906, which amended section 1322 of Title 31, Money and Finance.

Section 705(a) of the Comprehensive Employment and Training Act of 1973, referred to in subsec. (f)(2)(B), is Pub. L. 203, § 705(a), Dec. 28, 1973, 87 Stat. 879, which enacted former section 985 of Title 29, Labor, prior to general revision of Pub. L. 93-203 by Pub. L. 95-524, Oct. 27, 1978, 92 Stat. 1909. Provisions relating to reports under the Comprehensive Employment and Training Program are now covered by section 829 of Title 29.

CETA referred to in subsec. (f)(2)(B), means the Comprehensive Employment and Training Act of 1973, Pub. L. 92-203, Dec. 28, 1973, 87 Stat. 839, as amended, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

[1] So in original. Comma probably should be inserted between "women" and "minorities".

[2] So in original. Probably should read "section."

PRIOR PROVISIONS

A prior section 4 of act Feb. 20, 1946, c. 33, classified to section 1023 of this title, was redesignated section 10.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1022d, 1022e, 3116, 3132 of this title; title 31 sections 1322, 1326.

§ 1022b. Presentation of analysis respecting short-term and medium-term goals in Economic Report of President; mutually reinforcing means

(a) To aid in determining the short-term and medium-term goals for employment, production, real income, and prices, analysis shall be presented in the Economic Report with respect to major aspects of the appropriate composition or structure of each goal, and as to the appropriate apportionment of total national production among its major components (private investment, consumer expenditures, and public outlays) as affected by relative income flows and other factors, in order to promote balanced growth and a balanced Federal budget, reduce cyclical disturbances, and achieve the other purposes of this chapter and the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.].

(b) In choosing means to achieve the goal for the reduction of unemployment and choosing means to achieve the goal of reasonable price stability, those means which are mutually reinforcing shall be used to the extent practicable.

(Feb. 20, 1946, ch. 33, § 5, as added Oct. 27, 1978, Pub. L. 95-523, title I, § 105, 92 Stat. 1895.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (a) is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

PRIOR PROVISIONS

A prior section 5 of act Feb. 20, 1946, c. 33, classified to section 1024 of this title, was redesignated section 11.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1022a, 1022e, 3111 of this title.

§ 1022c. Inclusion of priority policies and programs in President's Budget

To contribute to the achievement of the goals under the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], the President's Budget for each fiscal year beginning after October 27, 1978, shall include priority policies and programs, which shall include, to the extent deemed appropriate by the President, consideration of the following—

(A) development of energy sources and supplies, transportation, and environmental improvement;

(B) proper attention to the problems and needs of smaller businesses including (i) the availability of investment capital, management and technical expertise, and technology

and labor needs, (ii) analysis of economic and social trends which may affect smaller businesses, (iii) government policies and programs (including agency regulations and excessive paperwork requirements) that may create undue hardship for or reduce the competitiveness of smaller businesses, and (iv) other policies and programs to remove barriers to competition and to strengthen and promote the creation and growth of smaller businesses;

(C) development of a comprehensive national agricultural policy that assures—

(i) production levels adequate to meet the nutritional needs of all Americans and respond to rising food requirements throughout the world;

(ii) farm and ranch income at full parity levels that will improve opportunities for farm families, encourage production, provide for essential capital investment in farming, and provide for farm prices at full parity in the market place;

(iii) renewed commitment to the protection and conservation of rural land and water through support for improved conservation practices and research, and attention to agricultural land use in the formulation of plans for energy, water and mineral resources, transportation, and commercial, industrial, and residential development; and

(iv) support for programs and public services designed to respond to the unique economic and social conditions of rural communities;

(D) proper attention to the relationship between Federal programs and policies and the problems and needs of urban areas, including inner cities and the employment problems of their residents, especially youths;

(E) proper attention to the quality and quantity of health care, education and training programs, child care and other human services, and housing, essential to a full employment economy and to moving toward their availability for all individuals at costs within their means;

(F) policies concerning Federal aid to State and local governments, especially for public investment and unemployment related costs;

(G) national defense and other needed international programs;

(H) proper attention to the relationship between Federal grants, contracts, and procurement and the closure of military bases and other Federal facilities and the distribution of jobs and income among different regions of the Nation, and among urban, suburban, and rural areas;

(I) proper attention to balancing the Federal budget;

(J) proper attention to the dislocation of jobs caused by Federal laws, regulations, and policies;

(K) policies and programs designed to increase exports and improve the international competitive position of agriculture, business, and industry, including measures to promote a free and fair international trading system, a sound and stable international monetary system and innovation in agriculture, business, and industry;

(L) such other priority policies and programs as the President deems appropriate.

(Feb. 20, 1946, ch. 33, § 6, as added Oct. 27, 1978, Pub. L. 95–523, title I, § 106, 92 Stat. 1895.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in provision preceding par. (A), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1022d of this title.

§ 1022d. President's Budget

(a) Recommendations

The President's Budget shall recommend levels of outlays and receipts which shall be consistent with the short-term economic goals of section 1022(a)(2)(A) of this title.

(b) Five-year projections of outlays and receipts

The President's Budget shall provide five-year projections of outlays and receipts consistent with the medium-term goals of section 1022a(b) of this title.

(c) Inclusion in Economic Report of President; purposeful development of expenditure and revenue elements; considerations governing determination of size of President's expenditures and revenue proposals

The principal elements in the President's Budget shall be set forth briefly in each Economic Report, toward the end of making clear the relationship between the President's Budget and the goals and policies set forth in such Economic Report. Both the expenditure and revenue elements of the President's Budget shall be developed to promote the purposes, policies, and goals of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.]. The size of the President's expenditure and revenue proposals, and the relationships between such proposals, shall be determined in a manner which gives consideration to the needs of the economy and the people in the priority areas set forth in section 1022c of this title, and the relationship between the President's expenditure and revenue proposals shall be guided accordingly.

(Feb. 20, 1946, ch. 33, § 7, as added Oct. 27, 1978, Pub. L. 95–523, title I, § 107, 92 Stat. 1896.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (c), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

§ 1022e. Inflation

(a) Methods and requirements for achieving price stability

The Congress determines that the objective of achieving reasonable price stability as soon as feasible, as set forth in section 1022(a)(3) of this title and section 1022a(a) of this title, shall be pursued by the methods and subject to the requirements of section 1022b(b) of this title.

(b) Coordination of fiscal or monetary policies with specific targeted policies

The Congress finds that sole dependence upon fiscal or monetary policies or both to combat inflation can exacerbate both inflation and unemployment. The Congress finds that the coordinated use of fiscal and monetary policies in conjunction with specific targeted policies are necessary to combat inflation.

(c) Policy initiation and recommendations; elements of structural policies

The President shall initiate specific policies to reduce the rate of inflation, including recommendations to the Congress where necessary, and include recommendations within the Economic Report and the President's budget to the extent practicable. Structural policies to reduce the rate of inflation may include—

(1) an effective information system to monitor and analyze inflationary trends in individual economic sectors, so that the President and Congress can be alerted to developing inflation problems especially those caused by bottlenecks inhibiting the flow of goods and services;

(2) programs and policies for alleviating shortages of goods, services, labor, and capital, with particular emphasis on food, energy, and critical industrial materials to aid in stabilizing prices;

(3) the establishment of stockpiles of agricultural commodities and other critical materials to help stabilize prices, meet emergency needs, and promote adequate income to producers;

(4) encouragement to labor and management to increase productivity within the national framework of full employment through voluntary arrangements in industries and economic sectors;

(5) recommendations to increase competition in the private sector and to improve the economic climate for the creation and growth of smaller businesses, including recommendations to strengthen and enforce the antitrust laws, the patent laws, and the internal revenue laws and regulations;

(6) removal or proper modification of such Government restrictions and regulations as added unnecessarily to inflationary costs;

(7) increasing exports and improving the international competitive position of agriculture, business, and industry; and

(8) such other administrative actions and recommendations for legislation as the President deems desirable, to promote reasonable price stability.

(Feb. 20, 1946, ch. 33, § 8, as added Oct. 27, 1978, Pub. L. 95-523, title I, § 109, 92 Stat. 1898.)

§ 1022f. Advisory board or boards

(a) An advisory board or boards (including regional advisory boards) may be established as the President deems appropriate, to advise and consult periodically with one or more of the following: The President, the Council of Economic Advisers, and such other departments and agencies of the executive branch of the Federal Government as the President shall determine.

(b) Such advisory board or boards shall include appropriate representation of labor, small and larger businesses and industries, agriculture, consumers, State and local officials, and the public at large, and shall advise and consult with respect to matters related to this chapter, the Full Employment aand [1] Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], and other appropriate matters related to national economic programs and policies. The President shall, in accordance with applicable provisions of law, take the steps necessary to provide appropriate compensation to the members of such advisory board or boards.

(Feb. 20, 1946, ch. 33, § 9, as added Oct. 27, 1978, Pub. L. 95-523, title I, § 111(a), 92 Stat. 1899.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (b), is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

TERMINATION OF ADVISORY BOARDS

Advisory Boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1023 of this title.

§ 1023. Council of Economic Advisers

(a) Creation; composition; qualifications; selection of chairman and vice chairman

There is created in the Executive Office of the President a Council of Economic Advisers (hereinafter called the "Council"). The Council shall be composed of three members who shall be appointed by the President by and with the advice and consent of the Senate, and each of whom shall be a person who, as a result of his training, experience, and attainments, is exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the Government in the light of the policy declared in section 1021 of this title, and to formulate and recommend national economic policy to promote full employment, production,

[1] So in original. Probably should read "and".

and purchasing power under free competitive enterprise. The President shall designate one of the members of the Council as chairman and one as vice chairman, who shall act as chairman in the absence of the chairman.

[See main edition for text of (b)]

(c) Duties

It shall be the duty and function of the Council—

[See main edition for text of (1) to (3)]

(4) to develop and recommend to the President national economic policies to foster and promote free competitive enterprise including small and larger business, to avoid economic fluctuations or to diminish the effects thereof, and to maintain full employment, production, and purchasing power;

[See main edition for text of (5) and (d)]

(e) Consultation with other groups and agencies; utilization of Governmental services and private research agencies

In exercising its powers, functions and duties under this chapter—

(1) the Council may constitute such advisory committees and may consult with such representatives of industry, agriculture, labor, consumers, State and local governments, and other groups, as it deems advisable, and shall consult with the board or boards established under section 1022f of this title;

(2) the Council shall, to the fullest extent possible, utilize the services, facilities, and information (including statistical information) of other Government agencies as well as of private research agencies, in order that duplication of effort and expense may be avoided.

In its work under this chapter and the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], the Council is authorized and directed to seek and obtain the cooperation of the various executive and independent agencies in the development of specialized studies essential to its responsibilities.

[See main edition for text of (f)]

(Feb. 20, 1946, ch. 33, § 10, formerly § 4, 60 Stat. 24; amended June 16, 1961, Pub. L. 87-49, 75 Stat. 93; renumbered and amended Oct. 27, 1978, Pub. L. 95-523, title I, §§ 104, 110, 92 Stat. 1893, 1899.)

REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (e) is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, as amended, which is classified principally to chapter 58 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-523, § 110(a)(1), inserted "full" following "policy to promote".

Subsec. (c)(4). Pub. L. 95-523, § 110(a)(2), inserted "including small and larger business" following "free competitive enterprise" and added "full" following "and to maintain".

Subsec. (e). Pub. L. 95-523, § 110(a)(3),(4), inserted in par. (1) ", and shall consult with the board or boards established under section 1022f of this title" following "as it deems advisable" and following par. (2) added provisions authorizing and directing the Council to seek and obtain the cooperation of executive and independent agencies in the development of specialized studies essential to its responsibilities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1022 of this title.

§ 1024. Joint Economic Committee

CODIFICATION

Section 5 of Act Feb. 20, 1946, ch. 33, 60 Stat. 25, was redesignated section 11 by Pub. L. 95-523, § 104, Oct. 27, 1978, 92 Stat. 1893.

CHAPTER 22—TRADE-MARKS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 36 section 380; title 48 section 1643.

SUBCHAPTER I—THE PRINCIPAL REGISTER

§ 1067. Interference, opposition, and proceedings for concurrent use registration or for cancellation; notice; Trademark Trial and Appeal Board

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SUBCHAPTER III—GENERAL PROVISIONS

§ 1124. Importation of goods bearing infringing marks or names forbidden

Except as provided in subsection (d) of section 1526 of title 19, no article of imported merchandise which shall copy or simulate the name of the[1] any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country, which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trademark registered in accordance with the provisions of this chapter or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the

[1] So in original.

advantages afforded by law to citizens of the United States in respect to trade-marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade-mark issued in accordance with the provisions of this chapter, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade-mark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

(As amended Oct. 3, 1978, Pub. L. 95-410, title II, § 211(b), 92 Stat. 903.)

AMENDMENTS

1978—Pub. L. 95-410 substituted "Except as provided in subsection (d) of section 1526 of title 19, no article" for "No article".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1094 of this title; title 19 section 1526; title 48 section 1643.

§ 1127. Construction and definitions; intent of chapter

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 section 1526.

CHAPTER 23—DISSEMINATION OF TECHNICAL, SCIENTIFIC, AND ENGINEERING INFORMATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 7852.

CHAPTER 25—FLAMMABLE FABRICS

§ 1196. Penalties

Any person who willfully violates section 1192 or 1197(b) of this title, or who fails to comply with section 1202(c) of this title, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $5,000 or be imprisoned not more than one year or both in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this chapter.

(As amended Nov. 10, 1978, Pub. L. 95-631, § 8(b), 92 Stat. 3747.)

AMENDMENTS

1978—Pub. L. 95-631 authorized penalties for noncompliance with section 1202(c) of this title.

§ 1202. Exemptions

(a) Exports; risk of injury to residents of United States

This chapter shall not apply to any fabric, related material, or product which is to be exported from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export and such fabric, related material, or product is in fact exported from the United States; unless the Consumer Product Safety Commission (hereinafter in this section referred to as the "Commission") determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this chapter shall apply to any fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(b) Imports intended for export; risk of injury to residents of United States

This chapter shall not apply to any fabric, related material, or product which is imported into the United States for dyeing, finishing, other processing, or storage in bond, and export from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export, and such fabric, related material, or product is in fact exported from the United States, unless the Commission determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this chapter shall apply to any such imported fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(c) Statement of exportation: filing period, information; notification of foreign country; petition for minimum filing period; good cause

Not less than thirty days before any person exports to a foreign country any fabric, related material, or product that fails to conform to an applicable flammability standard or regulation in effect under this chapter, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and of the basis for such flammability standard or regulation. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such fabric, related material, or product, the country and port of destination of such fabric, related material, or product, and the quantity of such fabric, related material, or product that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(As amended Nov. 10, 1978, Pub. L. 95-631, § 8(a), 92 Stat. 3746.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-631, § 8(a)(1), made the chapter applicable to exports when the Commission determines that exportation presents an unreasonable risk of injury to persons residing within the United States.

Subsec. (b). Pub. L. 95-631, § 8(a)(2), made the chapter applicable to imports intended for export when the Commission determines that exportation presents an unreasonable risk of injury to persons residing within the United States.

Subsec. (c). Pub. L. 95-631, § 8(a)(3), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title.

CHAPTER 30—HAZARDOUS SUBSTANCES

Sec.
1275. Toxicological Advisory Board [New].
(a) Establishment; functions; review and recommendations.
(b) Membership; appointment; qualifications; Chairman; term of office; reappointment; vacancies; meetings; compensation and travel expenses; Federal nonemployee status.
(c) Termination.

§ 1261. Definitions

For the purposes of this chapter—

[*See main edition for text of* (a) *to* (k)]

(*l*)(1) The terms "extremely flammable", "flammable", and "combustible" as applied to any substance, liquid, solid, or the content of a self-pressurized container shall be defined by regulations issued by the Commission.

(2) The test methods found by the Commission to be generally applicable for defining the flammability or combustibility characteristics of any such substance shall also be specified in such regulations.

(3) In establishing definitions and test methods related to flammability and combustibility, the Commission shall consider the existing definitions and test methods of other Federal agencies involved in the regulation of flammable and combustible substances in storage, transportation and use; and to the extent possible, shall establish compatible definitions and test methods.

(4) Until such time as the Commission issues a regulation under paragraph (1) defining the term "combustible" as applied to liquids, such term shall apply to any liquid which has a flash point above eighty degrees Fahrenheit to and including one hundred and fifty degrees, as determined by the Tagliabue Open Cup Tester.

[*See main edition for text of* (m) *to* (t)]

(As amended Pub. L. 95-631, § 9, Nov. 10, 1978, 92 Stat. 3747.)

AMENDMENTS

1978—Subsec. (*l*). Pub. L. 95-631 transferred the duties hereunder to the Commission from the Secretary; incorporated in provisions designated par. (1) existing text, authorized regulations to be applicable to liquids, and deleted definition of "extremely flammable" as substance with flash point at or below twenty degrees Fahrenheit and "flammable" as substance with a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester; incorporated in provisions designated par. (2) existing text extended to liquids covered in term "substance"; added par. (3); and incorporated in provisions designated par. (4) existing text applicable until superseded by regulation.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1262, 1275, 1471, 2076 of this title.

§ 1262. Declaration of hazardous substances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1261, 1275, 2076 of this title.

§ 1263. Prohibited acts

The following acts and the causing thereof are prohibited:

[*See main edition for text of* (a) *to* (h)]

(i) The failure to notify the Consumer Product Safety Commission with respect to exports, pursuant to section 1273(d) of this title.

(As amended Pub. L. 95-631, § 7(a), Nov. 10, 1978, 92 Stat. 3745.)

AMENDMENTS

1978—Subsec. (i). Pub. L. 95-631 added subsec. (i).

§ 1264. Penalties; exceptions

[*See main edition for text of* (a)]

(b) No person shall be subject to the penalties of subsection (a) of this section, (1) for having violated section 1263(c) of this title, if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Secretary, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated section 1263(a) of this title, if he established a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in this chapter; or (3) for having violated subsection (a) or (c) of section 1263 of this title with respect to any hazardous substance shipped or delivered for shipment for export to any foreign country, in a

package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce or if the Consumer Product Safety Commission determines that exportation of such substance presents an unreasonable risk of injury to persons residing within the United States, this clause shall not apply.

(As amended Pub. L. 95-631, § 7(b), Nov. 10, 1978, 92 Stat. 3745.)

AMENDMENTS

1978—Subsec. (b)(3). Pub. L. 95-631 substituted "with respect to" for "in respect of" and made cl. (3) inapplicable when the Consumer Product Safety Commission determines that exportation of the substance presents an unreasonable risk of injury to persons residing within the United States.

§ 1273. Imports

[*See main edition for text of* (a) *to* (c)]

(d) Statement of exportation: filing period, information; notification of foreign country; petition for minimum filing period: good cause

Not less than thirty days before any person exports to a foreign country any misbranded hazardous substance or banned hazardous substance, such person shall file a statement with the Consumer Product Safety Commission (hereinafter in this section referred to as the "Commission") notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis upon which such substance is considered misbranded or has been banned under this chapter. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such substance, the country and port of destination of such substance, and the quantity of such substance that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(As amended Pub. L. 95-631, § 7(c), Nov. 10, 1978, 92 Stat. 3746.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-631 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1263, 1269 of this title.

§ 1275. Toxicological Advisory Board

(a) Establishment; functions; review and recommendations

(1) Within 180 days after November 10, 1978, the Consumer Product Safety Commission (hereinafter in this section referred to as the "Commission") shall establish, in accordance with subsection (b) of this section, a Toxicological Advisory Board (hereinafter in this section referred to as the "Board") to advise the Commission on precautionary labeling for hazardous substances. The Board shall provide scientific and technical advice to the Commission concerning—

(A) proper labeling under sections 1261(p)(1) and 1262(b) of this title, with special attention to—

(i) the description of precautionary measures required under section 1261(p)(1)(F) of this title;

(ii) the statement describing the hazards associated with a hazardous substance as required under section 1261(p)(1)(E) of this title; and

(iii) instructions for first-aid treatment under section 1261(p)(1)(G) of this title; and

(B) the exemption of certain substances from labeling requirements under this chapter as permitted under section 1262(c) of this title.

(2) In carrying out its duties under paragraph (1)(A), the Board shall review any labeling requirements or guidelines which have been established by the Commission under section 1261(p)(1) or 1262(b) of this title. Based upon its review the Board shall develop and submit to the Commission, within one year after the date that the Board is established, any recommendations for revisions in such labeling requirements or guidelines which the Board considers to be appropriate, including any general recommendations which may be of assistance to the Commission in carrying out its responsibilities under section 1261(p)(1) or 1262(b) of this title. The Board shall periodically review the labeling requirements and guidelines established by the Commission under such sections to determine whether such requirements and guidelines reflect relevant changes in scientific knowledge and shall revise any general recommendations submitted to the Commission under this paragraph to reflect such changes.

(b) Membership; appointment; qualifications; Chairman; term of office; reappointment; vacancies; meetings; compensation and travel expenses; Federal nonemployee status

(1) The Board shall be composed of nine members appointed by the Commission. Each member of the Board shall be qualified by training and experience in one or more fields applicable to the duties of the Board, and at least three of the members of the Board shall be members of the American Board of Medical Toxicology. The Chairman of the Board shall be elected by the Board from among its members.

(2) The members of the Board shall be appointed for terms of three years. Members of the Board may be reappointed.

(3) Any vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term.

(4) The Board shall meet at such times and places as may be designated by the Commission in consultation with the Chairman, but not less than two times each year.

(5) Members of the Board who are not officers or employees of the United States shall, while attending meetings or conferences of the Board or while otherwise engaged in the business of the Board, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay payable for grade GS-18 of the General Schedule under section 5332 of title 5. While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed under section 5703(b) of such title. Individuals serving as members on the Board shall not be considered officers or employees of the United States by reason of receiving payments under this paragraph.

(c) Termination

The Board shall terminate on the date six years after the date it is established under this section.

(Pub. L. 86-613, § 20, as added Pub. L. 95-631, § 10, Nov. 10, 1978, 92 Stat. 3747.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (b)(5), was amended generally by Pub. L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain a subsec. (b).

CHAPTER 38—TRAFFIC AND MOTOR VEHICLE SAFETY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1920, 2002 of this title; title 42 section 4905; title 49 sections 1652, 1655.

SUBCHAPTER I—MOTOR VEHICLE SAFETY STANDARDS

PART A—GENERAL PROVISIONS

§ 1392. Motor vehicle safety standards

(a) Establishment

The Secretary shall establish by order appropriate Federal motor vehicle safety standards. Each such Federal motor vehicle safety standard shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms.

[See main edition for text of (b), (c)]

(d) Supremacy of federal standards; allowable higher standards for vehicles used by federal or state governments

Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

[See main edition for text of (e), (f)]

(g) Interstate motor carriers and carriers of explosives and other dangerous articles

In prescribing safety regulations covering motor vehicles subject to part II of the Interstate Commerce Act, as amended (49 U.S.C. 301 et seq.), or the Transportation of Explosives Act, as amended (18 U.S.C. 831-835), the Secretary shall not adopt or continue in effect any safety regulation which differs from a motor vehicle safety standard issued by the Secretary under this subchapter, except that nothing in this subsection shall be deemed to prohibit the Secretary from prescribing for any motor vehicle operated by a carrier subject to regulation under either or both of such Acts, a safety regulation which imposes a higher standard of performance subsequent to its manufacture than that required to comply with the applicable Federal standard at the time of manufacture.

[See main edition for text of (h) and (i)]

(Pub. L. 89-563, title I, § 103, Sept. 9, 1966, 80 Stat. 719; Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931; Pub. L. 93-492, title II, § 202, Oct. 27, 1974, 88 Stat. 1484; Pub. L. 94-346, §§ 2, 3, July 8, 1976, 90 Stat. 815.)

CODIFICATION

Subsecs. (a) and (d) are set out in this supplement to correct typographical error appearing in the main edition.

Part II of the Interstate Commerce Act, referred to in subsec. (g), which was classified to chapter 8 (§ 301 et seq.) of Title 49, Transportation, was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

TRANSFER OF FUNCTIONS

"Secretary" was substituted for "Interstate Commerce Commission" in subsec. (g), following "(18 U.S.C. 831-835) the" and "to prohibit the" pursuant to Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which transferred to and vested in the Secretary of Transportation all functions, powers, and duties of the Interstate Commerce Commission and the Chairman, members, offices, and officers thereof, in prescribing safety regulations covering motor vehicles subject to part II of the Interstate Commerce Act, as amended (49 U.S.C. 301 et seq.), or the Transportation of Explosives Act, as amended (18 U.S.C. 831-835). See section 1655(e)(4), (6) of Title 49, Transportation.

§ 1393. Repealed. Pub. L. 93-492, title I, § 107(b), Oct. 27, 1974, 88 Stat. 1482

Section, Pub. L. 89-563, title I, § 104, Sept. 9, 1966, 80 Stat. 720; Pub. L. 93-492, title I, § 107(a), Oct. 27, 1974, 88 Stat. 1481, provided for the National Motor Vehicle Safety Advisory Council; subsec. (a) relating to establishment and membership of the Council, "representative of the general public", publication of names of members, and selection of Chairman; subsec. (b) relating to consultations with Secretary of Transportation; and subsec. (c) relating to compensation and travel expenses of members.

EFFECTIVE DATE OF REPEAL

Section 107(b) of Pub. L. 93-492 provided for repeal of section 1393 of this title effective Oct. 1, 1977.

§ 1401. Inspection and investigation: enforcement of this subchapter and rules, regulations, or orders thereunder; motor vehicle accidents

CODIFICATION

Part II of the Interstate Commerce Act, referred to in subsec. (a)(3)(A), which was classified to chapter 8 (§ 301 et seq.) of Title 49, Transportation, was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

§ 1410. Exemption from safety standards of motor vehicles

[See main edition for text of (a) to (f)]

(g) Definitions

For the purpose of this section, the term "low-emission motor vehicle" means any motor vehicle which—

(1) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 7521 of title 42 at the time of manufacture to that type of vehicle; and

(2) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 7521 of title 42 at the time of manufacture to that type of vehicle.

CODIFICATION

Subsec. (g) is set out in this supplement to reflect the current citation for section 202 of the Clean Air Act, which was reclassified from section 1857f-1 to section 7521 of Title 42, The Public Health and Welfare, on enactment of Pub. L. 95-95.

PART B—DISCOVERY, NOTIFICATION, AND REMEDY OF MOTOR VEHICLE DEFECTS

§ 1418. Information, disclosure, and recordkeeping; confidential information

[See main edition for text of (a)]

(b) Every manufacturer of motor vehicles or tires except the manufacturer of tires which have been retreaded, shall cause the establishment and maintenance of records of the name and address of the first purchaser of each motor vehicle and tire produced by such manufacturer. To the extent required by regulations of the Secretary, every manufacturer of motor vehicles or tires except the manufacturer of tires which have been retreaded, shall cause the establishment and maintenance of records of the name and address of the first purchaser of each item of replacement equipment other than a tire produced by such manufacturer. The Secretary may, by rule, specify the records to be established and maintained, and reasonable procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this subsection; except that the availability or not of such assistance shall not affect the obligation of manufacturers under this subsection. Such procedures shall be reasonable for the particular type of motor vehicle or tires for which they are prescribed, and shall provide reasonable assurance that customer lists of any dealer and distributor, and similar information, will not be made available to any person other than the dealer or distributor, except where necessary to carry out the purpose of this part.

(As amended Pub. L. 95-599, title III, § 317, Nov. 6, 1978, 92 Stat. 2752.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-599 inserted "except the manufacturer of tires which have been retreaded" following "or tires" in two places.

CHAPTER 39—FAIR PACKAGING AND LABELING PROGRAM

§ 1456. Enforcement

[See main edition for text of (a), (b)]

(c) Imports

In the case of any imports into the United States of any consumer commodity covered by this chapter, the provisions of sections 1453 and 1454 of this title shall be enforced by the Secretary of the Treasury pursuant to section 381(a) and (b) of title 21.

CODIFICATION

Subsec. (c) is set out in this supplement to correct typographical error appearing in the main edition.

CHAPTER 40—DEPARTMENT OF COMMERCE

Sec.

1507b. Assistant Secretary of Commerce; appointment; compensation; duties [New].
1528. Development of water transportation; duties of Secretary of Commerce.

§ 1507b. Assistant Secretary of Commerce; appointment; compensation; duties

There shall be in the Department of Commerce, in addition to the Assistant Secretaries provided by law as of November 12, 1977, one additional Assistant Secretary of Commerce who shall be appointed by the President, by and with the advice and consent of the Senate. Such Assistant Secretary shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

(Pub. L. 95-173, § 9(a), Nov. 12, 1977, 91 Stat. 1360.)

§ 1511. Bureaus in Department

The following named bureaus, administrations, services, offices, and programs of the public service, and all that pertains thereto, shall be under the jurisdiction and subject to the control of the Secretary of Commerce:

[See main edition for text of (a) to (f)]

(g) United States Fire Administration; and

[See main edition for text of (h)]

(As amended Oct. 5, 1978, Pub. L. 95-422, § 2(c), 92 Stat. 932.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95-422 substituted "United States Fire Administration" for "National Fire Prevention and Control Administration".

TRANSFER OF FUNCTIONS

All functions of the Secretary of Commerce, the Department of Commerce, and officers and components of the Department of Commerce as they related to or were utilized by the Office of Energy Programs within the Department of Commerce, but limited to industrial energy conservation programs, were transferred to, and vested in, the Secretary of Energy as part of the creation of the Department of Energy by Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565. See section 7157 of Title 42, The Public Health and Welfare.

OFFICE OF INSPECTOR GENERAL

All the functions, powers, and duties of the Office of Audits and Investigations and Inspections Staff and that portion of the office referred to as the Office of Investigations and Security which had responsibility for investigation of alleged criminal violations and program abuse in the Department of Commerce were transferred to the Office of Inspector General in the Department of Commerce, as established by Pub. L. 95-452, § 2, Oct. 12, 1978, 92 Stat. 1101, set out in the Appendix to Title 5, Government Organization and Employees. See section 9(a)(1)(B) of Pub. L. 95-452, set out in the Appendix to Title 5.

REORGANIZATION PLAN NO. 4 OF 1970

Eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, as amended by Pub. L. 94-461, § 4(c)(1), Oct. 8, 1976, 90 Stat. 1969; Pub. L. 95-219, § 3(a)(1), Dec. 28, 1977, 91 Stat. 1613.

* * * * *

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

* * * * *

SEC. 2. ESTABLISHMENT OF ADMINISTRATION

* * * * *

(e)(1) There shall be in the Administration a General Counsel and five Assistant Administrators, one of whom shall be the Assistant Administrator for Coastal Zone Management and one of whom shall be the Assistant Administrator for Fisheries. The General Counsel and each Assistant Administrator shall be appointed by the Secretary, subject to approval of the President, and shall be compensated at a rate now or hereafter provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(2) The General Counsel shall serve as the chief legal officer for all legal matters which may arise in connection with the conduct of the functions of the Administration.

(3) The Assistant Administrator for Coastal Zone Management shall be an individual who is, by reason of background and experience, especially qualified to direct the implementation and administration of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(4) The Assistant Administrator for Fisheries shall be responsible for all matters related to living marine resources which may arise in connection with the conduct of the functions of the Administration.

* * * * *

EXECUTIVE ORDER NO. 11759

Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, set out as a note under this section in the main edition, which related to compensation of certain officials in the Domestic and International Business Administration, was superseded by Ex. Ord. No. 12096, Nov. 2, 1978, 43 F.R. 51597, set out as a note below.

EX. ORD. NO. 12096. COMPENSATION OF CERTAIN OFFICIALS IN INDUSTRY AND TRADE ADMINISTRATION

Ex. Ord. No. 12096, Nov. 2, 1978, 43 F.R. 51597, provided:

By the authority vested in me as President of the United States of America by Section 703(a) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2153(a)), it is hereby ordered as follows:

1-101. The compensation for the position of Senior Deputy Assistant Secretary for Industry and Trade, Industry and Trade Administration, Department of Commerce, is fixed at the rate now or hereafter prescribed by law for level V of the Executive Schedule (5 U.S.C. 5316).

1-102. The compensation for the position of Deputy Assistant Secretary for Trade Regulation, Bureau of Trade Regulation, Industry and Trade Administration, Department of Commerce, is fixed at the highest rate now or hereafter prescribed by law for grade 18 of the General Schedule (5 U.S.C. 5332).

1-103. The compensation for the positions of Deputy Director, Bureau of Trade Regulation, and Director, Office of Industrial Mobilization, Bureau of Trade Regulation, Industry and Trade Administration, Department of Commerce, are fixed at the highest rate now or hereafter prescribed by law for grade 17 of the General Schedule (5 U.S.C. 5332).

1-104. This order supersedes Executive Order No. 11759 of January 15, 1974.

JIMMY CARTER.

§ 1511a. Repealed. Pub. L. 95-219, § 3(a)(2), Dec. 28, 1977, 91 Stat. 1613

Section, Pub. L. 94-370, § 15(a), July 26, 1976, 90 Stat. 1032, authorized the appointment and set forth the compensation level for an Associate Administrator for Coastal Zone Management.

§ 1528. Development of water transportation; duties of Secretary of Commerce

It is declared to be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation.

It shall be the duty of the Secretary of Commerce, with the object of promoting, encouraging, and developing inland waterway transportation facilities in connection with the commerce of the United States, to investigate the appropriate types of boats suitable for different classes of such waterways; to investigate the subject of water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, ware-

houses, apparatus, equipment, and appliances in connection therewith, and also railroad spurs, and switches connecting with such terminals, with a view to devising the types most appropriate for different locations, and for the more expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities, cities, and towns regarding the appropriate location of such terminals, and to cooperate with them in the preparation of plans for suitable terminal facilities; to investigate the existing status of water transportation upon the different inland waterways of the country, with a view to determining whether such waterways are being utilized to the extent of their capacity, and to what extent they are meeting the demands of traffic, and whether the water carriers utilizing such waterways are interchanging traffic with the railroads; and to investigate any other matter that may tend to promote and encourage inland water transportation. It shall also be the province and duty of the Secretary of Commerce to compile, publish, and distribute, from time to time, such useful statistics, data, and information concerning transportation on inland waterways as he may deem to be of value to the commercial interests of the country.

The words "inland waterway" as used in this section shall be construed to include the Great Lakes.

(Feb. 28, 1920, ch. 91, § 500, 41 Stat. 499; 1939 Reorg. Plan No. II, § 6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434.)

CODIFICATION

Section was formerly classified to section 142 of Title 49, Transportation.

TRANSFER OF FUNCTIONS

The Inland Waterways Corporation and all of its functions and obligations were transferred to the Department of Commerce, and all functions and duties of the Secretary of War with regard to the Corporation were transferred to the Secretary of Commerce by Reorg. Plan No. II of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 41—CONSUMER CREDIT PROTECTION

SUBCHAPTER V—DEBT COLLECTION PRACTICES [NEW]

Sec.
1692. Congressional findings and declaration of purpose.
1692a. Definitions.
1692b. Acquisition of location information.
1692c. Communication in connection with debt collection.
(a) Communication with the consumer generally.
(b) Communication with third parties.
(c) Ceasing communication.
(d) Definitions.
1692d. Harassment or abuse.
1692e. False or misleading representations.
1692f. Unfair practices.
1692g. Validation of debts.
(a) Notice of debts; contents.
(b) Disputed debts.
(c) Admission of liability.
1692h. Multiple debts.
1692i. Legal actions by debt collectors.
1692j. Furnishing certain deceptive forms.
1692k. Civil liability.
(a) Amount of damages.
(b) Factors considered by court.
(c) Intent.
(d) Jurisdiction.
(e) Advisory opinions of Commission.
1692l. Administrative enforcement.
(a) Federal Trade Commission.
(b) Applicable provisions of law.
(c) Agency powers.
(d) Rules and regulations.
1692m. Reports to Congress by the Commission.
1692n. Relation to State laws.
1692o. Exemption for State regulation.

SUBCHAPTER VI—ELECTRONIC FUND TRANSFERS [NEW]

1693. Congressional findings and declaration of purpose.
1693a. Definitions.
1693b. Regulations.
(a) Prescription by Board.
(b) Issuance of model clauses.
(c) Criteria; modification of requirements.
(d) Availability of disclosures, protections, responsibilities, and remedies created by this subchapter.
1693c. Terms and conditions of transfers.
(a) Disclosures; time; form; contents.
(b) Notification of changes to consumer.
(c) Time for disclosures respecting accounts accessible prior to effective date of this subchapter.
1693d. Documentation of transfers.
(a) Availability of written documentation to consumer; contents.
(b) Notice of credit to consumer.
(c) Periodic statement; contents.
(d) Consumer passbook accounts.
(e) Accounts other than passbook accounts.
(f) Documentation as evidence.
1693e. Preauthorized transfers.
1693f. Error resolution.
(a) Notification to financial institution of error.
(b) Correction of error; interest.
(c) Provisional recredit of consumer's account.
(d) Absence of error; finding; explanation.
(e) Treble damages.
(f) Acts constituting error.
1693g. Consumer liability.
(a) Unauthorized electronic fund transfers; limit.
(b) Burden of proof.
(c) Determination of limitation on liability.
(d) Restriction on liability.
(e) Scope of liability.
1693h. Liability of financial institutions.
(a) Action or failure to act proximately causing damages.
(b) Acts of God and technical malfunctions.
(c) Intent.
1693i. Issuance of cards or other means of access.
(a) Prohibition; proper issuance.
(b) Exceptions.
(c) Validation.
1693j. Suspension of obligations.
1693k. Compulsory use of electronic fund transfers.
1693l. Waiver of rights.
1693m. Civil liability.
(a) Individual or class action for damages; amount of award.

Sec.
(b) Factors determining amount of award.
(c) Unintentional violations; bona fide error.
(d) Good faith compliance with rule, regulation, or interpretation of Board or approval of duly authorized official or employee of Federal Reserve System.
(e) Notification to consumer prior to action; adjustment of consumer's account.
(f) Action in bad faith or for harassment; attorney's fees.
(g) Jurisdiction of courts; time for maintenance of action.
1693n. Criminal liability.
(a) Violations respecting giving of false or inaccurate information, failure to provide information, and failure to comply with provisions of this subchapter.
(b) Violations affecting interstate or foreign commerce.
(c) "Debt instrument" defined.
1693o. Administrative enforcement.
(a) Enforcing agencies.
(b) Violations of subchapter deemed violations of pre-existing statutory requirements; additional powers.
(c) Overall enforcement authority of Federal Trade Commission.
1693p. Reports to Congress.
1693q. Relation to State laws.
1693r. Exemption for State regulation.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 12 section 1464.

SUBCHAPTER I—CONSUMER CREDIT COST DISCLOSURE

PART A—GENERAL PROVISIONS

§ 1601. Congressional findings and declaration of purpose

SHORT TITLE OF 1978 AMENDMENT

Section 901 of title IX of Pub. L. 90-321, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3728, provided that: "This title [which enacted subchapter VI of this chapter] may be cited as the 'Electronic Fund Transfer Act'."

SHORT TITLE OF 1977 AMENDMENT

Section 801 of Pub. L. 90-321, as added by Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 874, provided that: "This title [enacting subchapter V of this chapter] may be cited as the 'Fair Debt Collection Practices Act'."

§ 1602. Definitions and rules of construction

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1667, 1693a, 1693g of this title; title 12 sections 1735f-5, 2602, 3401; title 42 section 5511.

§ 1603. Exempted transactions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title; title 42 section 8221.

§ 1607. Administrative enforcement

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

PART D—CREDIT BILLING

§ 1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; credit card surcharge prohibition; finance charge for sales transactions involving cash discounts

TERMINATION DATE OF 1976 AMENDMENT

Section 3(c)(2) of Pub. L. 94-222, as amended by Pub. L. 95-630, title XV, § 1501, Nov. 10, 1978, 92 Stat. 3713, provided that: "The amendments made by paragraph (1) [amending subsec. (a) of this section] shall cease to be effective on February 27, 1981."

SUBCHAPTER II—RESTRICTIONS ON GARNISHMENT

§ 1673. Restriction on garnishment

[See main edition for text of (a)]

(b) Exceptions

(1) The restrictions of subsection (a) of this section do not apply in the case of

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act [11 U.S.C. 1001 et seq.].

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) Execution or enforcement of garnishment order or process prohibited

No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

(As amended Pub. L. 95-30, title V, § 501(e)(1)–(3), May 23, 1977, 91 Stat. 161, 162.)

AMENDMENT OF SUBSEC. (b)(1)(B)

Pub. L. 95-598, title III, § 312(a), title IV, § 402(a), Nov. 6, 1978, 92 Stat. 2676, 2682, provided that, effective Oct. 1, 1979, subsec. (b)(1)(B) of this section is amended to read as follows:

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11.

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (b)(1)(B), is act July 1, 1898, ch. 541, 30 Stat. 544 as amended. Chapter XIII of the Bankruptcy Act is classified to chapter 13 (§ 1001 et seq.) of Title 11, Bankruptcy. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-30, § 501(e)(1), (2), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C) thereof, substituted "for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review" for "of any court for the support of any person" in subpar. (A) as so redesignated, and added par. (2).

Subsec. (c). Pub. L. 95-30, § 501(e)(3), inserted ", and no State (or officer or agency thereof)," following "or any State".

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 501(e)(5) of Pub. L. 95-30 provided that: "The amendments made by this subsection [amending this section and section 1675 of this title] shall take effect on the first day of the first calendar month which begins after the date of enactment of this Act [May 23, 1977]."

CROSS REFERENCES

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 or Title 42, The Public Health and Welfare.

§ 1675. Exemption for State-regulated garnishments

The Secretary of Labor may by regulation exempt from the provisions of section 1673(a) and (b)(2) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 1673(a) and (b)(2) of this title.

(As amended Pub. L. 95-30, title V, § 501(e)(4), May 23, 1977, 91 Stat. 162.)

AMENDMENTS

1977—Pub. L. 95-30 substituted "section 1673(a) and (b)(2) of this title" for "section 1673(a) of this title" in two instances.

SUBCHAPTER III—CREDIT REPORTING AGENCIES

§ 1681a. Definitions; rules of construction

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1692d, 1692e of this title; title 26 section 7609.

§ 1681b. Permissible purposes of consumer reports

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681a, 1681e, 1681f, 1692d of this title.

§ 1681c. Reporting of obsolete information prohibited

(a) Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) cases under title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

[*See main edition for text of (2) to (6); (b)*]

(As amended Pub. L. 95-598, title III, § 312(b), Nov. 6, 1978, 92 Stat. 2676.)

REFERENCES IN TEXT

Bankruptcy Act, referred to in subsec. (a)(1), was Act July 1, 1898, c. 541, 30 Stat. 544, as amended, which was classified to section 1 et seq. of Title 11, Bankruptcy, prior to its repeal by Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2549.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-598 substituted "cases under title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years" for "Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1681s. Administrative enforcement

CODIFICATION

The Acts to regulate commerce, referred to in subsec. (b)(4), are known as the Interstate Commerce Act (act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended), which was classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 § 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

SUBCHAPTER IV—EQUAL CREDIT OPPORTUNITY

§ 1691c. Administrative enforcement

CODIFICATION

The Acts to regulate commerce, referred to in subsec. (a)(4), are known as the Interstate Commerce Act (act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended), which was classified to chapters 1 (§1 et seq.), 8

(§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS.

All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

SUBCHAPTER V—DEBT COLLECTION PRACTICES [NEW]

§ 1692. Congressional findings and declaration of purpose

(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

(Pub. L. 90-321, title VIII, § 802, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 874.)

EFFECTIVE DATE

Section 818 of Pub. L. 90-321, as added Pub. L. 95-109, provided that: "This title [this subchapter] takes effect upon the expiration of six months after the date of its enactment [Sept. 20, 1977], but section 809 [section 1692g of this title] shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date."

SHORT TITLE

This subchapter known as the "Fair Debt Collection Practices Act", see Short Title of 1977 Amendment note set out under section 1601 of this title.

§ 1692a. Definitions

As used in this subchapter

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (G) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

(F) any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client; and

(G) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(Pub. L. 90-321, title VIII, § 803, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 875.)

§ 1692b. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

(Pub. L. 90-321, title VIII, § 804, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 876.)

Section Referred to in Other Sections

This section is referred to in sections 1692c, 1692d, 1692e of this title.

§ 1692c. Communication in connection with debt collection

(a) Communications with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communications with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) Definitions

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(Pub. L. 90-321, title VIII, § 805, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 876.)

§ 1692d. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) of this title.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

(Pub. L. 90-321, title VIII, § 806, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 877.)

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) Except as otherwise provided for communications to acquire location information under section 1692b of this title, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

(Pub. L. 90-321, title VIII, § 807, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 877.)

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated pay-

ment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

(Pub. L. 90-321, title VIII, § 808, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 879.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1692a of this title.

§ 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(Pub. L. 90-321, title VIII, § 809, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 879.)

EFFECTIVE DATE

Section applicable only with respect to debts for which the initial attempt to collect occurs after the effective date of this subchapter, which takes effect upon the expiration of six months after Sept. 20, 1977, see section 818 of Pub. L. 90-321, set out as an Effective Date note under section 1692 of this title.

§ 1692h. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

(Pub. L. 90-321, title VIII, § 810, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 880.)

§ 1692i. Legal actions by debt collectors

(a) Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

(Pub. L. 90-321, title VIII, § 811, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 880.)

§ 1692j. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or

in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

(Pub. L. 90-321, title VIII, § 812, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 880.)

§ 1692k. Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Commission

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(Pub. L. 90-321, title VIII, § 813, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 881.)

Section Referred to in Other Sections

This section is referred to in section 1692*l* of this title.

§ 1692*l*. Administrative enforcement

(a) Federal Trade Commission

Compliance with this subchapter shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another agency under subsection (b) of this section. For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Compliance with any requirements imposed under this subchapter shall be enforced under—

(1) section 1818 of title 12, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 1464(d) of title 12, section 1730 of title 12, and sections 1426(i) and 1437 of title 12, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the Na-

tional Credit Union Administration with respect to any Federal credit union;

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts;

(5) the Federal Aviation Act of 1958 [49 U.S.C. 1301 et seq.], by the Civil Aeronautics Board with respect to any air carrier or any foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) Rules and regulations

Neither the Commission nor any other agency referred to in subsection (b) of this section may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this subchapter.

(Pub. L. 90-321, title VIII, § 814, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 881.)

REFERENCES IN TEXT

The Federal Trade Commission Act referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Federal Credit Union Act, referred to in subsec. (b)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Acts to regulate commerce, referred to in subsec. (b)(4), are known as the Interstate Commerce Act (act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended and supplemented) which is classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of Title 49 and Tables.

The Federal Aviation Act of 1958, referred to in subsec. (b)(5), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(6), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified generally to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1692m of this title.

§ 1692m. Reports to Congress by the Commission

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Commission under section 1692*l* of this title.

(b) In the exercise of its functions under this subchapter, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692*l* of this title.

(Pub. L. 90-321, title VIII, § 815, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 882.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsec. (a), is the date occurring upon the expiration of six months after Sept. 20, 1977. See section 818 of Pub. L. 90-321, set out as an Effective Date note under section 1692 of this title.

§ 1692n. Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

(Pub. L. 90-321, title VIII, § 816, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 883.)

§ 1692o. Exemption for State regulation

The Commission shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements sub-

stantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

(Pub. L. 90-321, title VIII, § 817, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 883.)

SUBCHAPTER VI—ELECTRONIC FUND TRANSFERS [NEW]

§ 1693. Congressional findings and declaration of purpose

(a) The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) It is the purpose of this subchapter to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights.

(Pub. L. 90-321, title IX, § 902, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3728.)

Effective Date

Section 921 of title IX of Pub. L. 90-321, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3741, provided that: "This title [enacting this subchapter] takes effect upon the expiration of eighteen months from the date of its enactment [Nov. 10, 1978] except that sections 909 and 911 [sections 1693g, 1693i of this title] take effect upon the expiration of ninety days after the date of enactment."

Short Title

This subchapter known as the "Electronic Fund Transfer Act", see section 901 of Pub. L. 90-321, set out as a note under section 1601 of this title.

§ 1693a. Definitions

As used in this subchapter—

(1) the term "accepted card or other means of access" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 1602(i) of this title, as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

(3) the term "Board" means the Board of Governors of the Federal Reserve System;

(4) the term "business day" means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(5) the term "consumer" means a natural person;

(6) the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account;

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not comtemplated;

as determined under regulations of the Board;

(7) the term "electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(8) the term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(9) the term "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(10) the term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of

Puerto Rico, or any political subdivision of any of the foregoing; and

(11) the term "unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

(Pub. L. 90-321, title IX, § 903, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3728.)

§ 1693b. Regulations

(a) Prescription by Board

The Board shall prescribe regulations to carry out the purposes of this subchapter. In prescribing such regulations, the Board shall:

(1) consult with the other agencies referred to in section 1693o of this title and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

(2) prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(3) to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

(4) any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

(b) Issuance of model clauses

The Board shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 1693c of this title and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. Such model clauses shall be adopted after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5. With respect to the disclosures required by section 1693c(a)(3) and (4) of this title, the Board shall take account of variations in the services and charges under different electronic fund transfer system and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

(c) Criteria; modification of requirements

Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Board shall by regulation modify the requirements imposed by this subchapter on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this subchapter.

(d) Availability of disclosures, protections, responsibilities, and remedies created by this subchapter

In the event that electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this subchapter are made applicable to such persons and services.

(Pub. L. 90-321, title IX, § 904, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3730.)

§ 1693c. Terms and conditions of transfers

(a) Disclosures; time; form; contents

The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

(1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

(2) the telephone number and address of the person or office to be notified in the event the consumer believes than[1] an unauthorized electronic fund transfer has been or may be effected;

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Board;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(5) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

[1] So in original. Probably should be "that".

(6) the consumer's right to receive documentation of electronic fund transfers under section 1693d of this title;

(7) a summary, in a form prescribed by regulations of the Board, of the error resolution provisions of section 1693f of this title and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(8) the financial institution's liability to the consumer under section 1693h of this title; and

(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons.

(b) Notification of changes to consumer

A financial institution shall notify a consumer in writing at least twenty-one days prior to the effective date of any change in any term or condition of the consumer's account required to be disclosed under subsection (a) of this section if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (a)(3) of this section, the Board shall require subsequent notification if such a change is made permanent.

(c) Time for disclosures respecting accounts accessible prior to effective date of this subchapter

For any account of a consumer made accessible to electronic fund transfers prior to the effective date of this subchapter, the information required to be disclosed to the consumer under subsection (a) of this section shall be disclosed not later than the earlier of—

(1) the first periodic statement required by section 1693d(c) of this title after the effective date of this subchapter; or

(2) thirty days after the effective date of this subchapter.

(Pub. L. 90-321, title IX, § 905, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3730.)

REFERENCES IN TEXT

For effective date of this subchapter, referred to in subsec. (c), see section 921 of Pub. L. 90-321, set out as an Effective Date note under section 1693 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693b, 1693d, 1693g, 1693i of this title.

§ 1693d. Documentation of transfers

(a) Availability of written documentation to consumer; contents

For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer's account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer written documentation of such transfer. The documentation shall clearly set forth to the extent applicable—

(1) the amount involved and date the transfer is initiated;

(2) the type of transfer;

(3) the identity of the consumer's account with the financial institution from which or to which funds are transferred;

(4) the identity of any third party to whom or from whom funds are transferred; and

(5) the location or identification of the electronic terminal involved.

(b) Notice of credit to consumer

For a consumer's account which is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once in each successive sixty-day period, except where the payor provides positive notice of the transfer to the consumer, the financial institution shall elect to provide promptly either positive notice to the consumer when the credit is made as scheduled, or negative notice to the consumer when the credit is not made as scheduled, in accordance with regulations of the Board. The means of notice elected shall be disclosed to the consumer in accordance with section 1693c of this title.

(c) Periodic statement; contents

A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Except as provided in subsections (d) and (e) of this section, such statement shall be provided at least monthly for each monthly or shorter cycle in which an electronic fund transfer affecting the account has occurred, or every three months, whichever is more frequent. The statement, which may include information regarding transactions other than electronic fund transfers, shall clearly set forth—

(1) with regard to each electronic fund transfer during the period, the information described in subsection (a) of this section, which may be provided on an accompanying document;

(2) the amount of any fee or charge assessed by the financial institution during the period for electronic fund transfers or for account maintenance;

(3) the balances in the consumer's account at the beginning of the period and at the close of the period; and

(4) the address and telephone number to be used by the financial institution for the purpose of receiving any statement inquiry or notice of account error from the consumer. Such address and telephone number shall be preceded by the caption "Direct Inquiries To:" or other similar language indicating that the address and number are to be used for such inquiries or notices.

(d) Consumer passbook accounts

In the case of a consumer's passbook account which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, a financial institution may, in lieu of complying with the requirements of subsection (c) of this section, upon presentation of the passbook provide the consumer in writing with the amount and date of each such transfer involving the account since the passbook was last presented.

(e) Accounts other than passbook accounts

In the case of a consumer's account, other than a passbook account, which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, the financial institution may provide a periodic statement on a quarterly basis which otherwise complies with the requirements of subsection (c) of this section.

(f) Documentation as evidence

In any action involving a consumer, any documentation required by this section to be given to the consumer which indicates that an electronic fund transfer was made to another person shall be admissible as evidence of such transfer and shall constitute prima facie proof that such transfer was made.

(Pub. L. 90-321, title IX, § 906, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3731.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693c, 1693f, 1693g of this title.

§ 1693e. Preauthorized transfers

(a) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

(b) In the case of preauthorized transfers from a consumer's account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with regulations of the Board, of the amount to be transferred and the scheduled date of the transfer.

(Pub. L. 90-321, title IX, § 907, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3733.)

§ 1693f. Error resolution

(a) Notification to financial institution of error

If a financial institution, within sixty days after having transmitted to a consumer documentation pursuant to section 1693d(a), (c), or (d) of this title or notification pursuant to section 1693d(b) of this title, receives oral or written notice in which the consumer—

(1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;

(2) indicates the consumer's belief that the documentation, or, in the case of notification pursuant to section 1693d(b) of this title, the consumer's account, contains an error and the amount of such error; and

(3) sets forth the reasons for the consumer's belief (where applicable) that an error has occurred,

the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (c) of this section, nor shall the financial institution be liable under subsection (e) of this section if the written confirmation is not received within the ten-day period referred to in the previous sentence.

(b) Correction of error; interest

If the financial institution determines that an error did occur, it shall promptly, but in no event more than one business day after such determination, correct the error, subject to section 1693g of this title, including the crediting of interest where applicable.

(c) Provisional recredit of consumer's account

If a financial institution receives notice of an error in the manner and within the time period specified in subsection (a) of this section, it may, in lieu of the requirements of subsections (a) and (b) of this section, within ten business days after receiving such notice provisionally recredit the consumer's account for the amount alleged to be in error, subject to section 1693g of this title, including interest where applicable, pending the conclusion of its investigation and its determination of whether an error has occurred. Such investigation shall be concluded not later than forty-five days after receipt of notice of the error. During the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

(d) Absence of error; finding; explanation

If the financial institution determines after its investigation pursuant to subsection (a) or (c) of this section that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

(e) Treble damages

If in any action under section 1693m of this title, the court finds that—

(1) the financial institution did not provisionally recredit a consumer's account within the ten-day period specified in subsection (c) of this section and the financial institution (A) did not make a good faith investigation of the alleged error, or (B) did not have a rea-

sonable basis for believing that the consumer's account was not in error; or

(2) the financial institution knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation,

then the consumer shall be entitled to treble damages determined under section 1693m(a)(1) of this title.

(f) Acts constituting error

For the purpose of this section, an error consists of—

(1) an unauthorized electronic fund transfer;

(2) an incorrect electronic fund transfer from or to the consumer's account;

(3) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;

(4) a computational error by the financial institution;

(5) the consumer's receipt of an incorrect amount of money from an electronic terminal;

(6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this subchapter; or

(7) any other error described in regulations of the Board.

(Pub. L. 90-321, title IX, § 908, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3733.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693c, 1693m of this title.

§ 1693g. Consumer liability

(a) Unauthorized electronic fund transfers; limit

A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other meanas[1] of access and if the issuer of such card, code, or other means of access has provided a means whereby the user of such card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation. In no event, however, shall a consumer's liability for an unauthorized transfer exceed the lesser of—

(1) $50; or

(2) the amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected. Notice under this paragraph is sufficient when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive such information.

Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution establishes would not have occurred but for the failure of the consumer to report within sixty days of transmittal of the statement (or in extenuating circumstances such as extended travel or hospitalization, within a reasonable time under the circumstances) any unauthorized electronic fund transfer or account error which appears on the periodic statement provided to the consumer under section 1693d of this title. In addition, reimbursement need not be made to the consumer for losses which the financial institution establishes would not have occurred but for the failure of the consumer to report any loss or theft of a card or other means of access within two business days after the consumer learns of the loss or theft (or in extenuating circumstances such as extended travel or hospitalization, within a longer period which is reasonable under the circumstances), but the consumer's liability under this subsection in any such case may not exceed a total of $500, or the amount of unauthorized electronic fund transfers which occur following the close of two business days (or such longer period) after the consumer learns of the loss or theft but prior to notice to the financial institution under this subsection, whichever is less.

(b) Burden of proof

In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (a) of this section have been met, and, if the transfer was initiated after the effective date of section 1693c of this title, that the disclosures required to be made to the consumer under section 1693c(a)(1) and (2) of this title were in fact made in accordance with such section.

(c) Determination of limitation on liability

In the event of a transaction which involves both an unauthorized electronic fund transfer and an extension of credit as defined in section 1602(e) of this title pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn, the limitation on the consumer's liability for such transaction shall be determined solely in accordance with this section.

(d) Restriction on liability

Nothing in this section imposes liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under

[1] So in original. Probably should read "means".

any agreement with the consumer's financial institution.

(e) Scope of liability

Except as provided in this section, a consumer incurs no liability from an unauthorized electronic fund transfer.

(Pub. L. 90-321, title IX, § 909, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3734.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1693f of this title.

§ 1693h. Liability of financial institutions

(a) Action or failure to act proximately causing damages

Subject to subsections (b) and (c) of this section, a financial institution shall be liable to a consumer for all damages proximately caused by—

(1) the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

(A) the consumer's account has insufficient funds;

(B) the funds are subject to legal process or other encumbrance restricting such transfer;

(C) such transfer would exceed an established credit limit;

(D) an electronic terminal has insufficient cash to complete the transaction; or

(E) as otherwise provided in regulations of the Board;

(2) the financial institution's failure to make an electronic fund transfer due to insufficient funds when the financal[1] institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer's account which would have provided sufficient funds to make the transfer, and

(3) the financial institution's failure to stop payment of a preauthorized transfer from a consumer's account when instructed to do so in accordance with the terms and conditions of the account.

(b) Acts of God and technical malfunctions

A financial institution shall not be liable under subsection (a)(1) or (2) of this section if the financial institution shows by a preponderance of the evidence that its action of failure to act resulted from—

(1) an act of God or other circumstance beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or

(2) a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic fund transfer or, in the case of a preauthorized transfer, at the time such transfer should have occurred.

[1] So in original. Probably should be "financial"

(c) Intent

In the case of a failure described in subsection (a) of this section which was not intentional and which resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the financial institution shall be liable for actual damages proved.

(Pub. L. 90-321, title IX, § 910, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3735.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693c, 1693m of this title.

§ 1693i. Issuance of cards or other means of access

(a) Prohibition; proper issuance

No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than—

(1) in response to a request or application therefor; or

(2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

(b) Exceptions

Notwithstanding the provisions of subsection (a) of this section, a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if—

(1) such card, code, or other means of access is not validated;

(2) such distribution is accompanied by a complete disclosure, in accordance with section 1693c of this title, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated;

(3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Board, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and

(4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(c) Validation

For the purpose of subsection (b) of this section, a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

(Pub. L. 90-321, title IX, § 911, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3736.)

§ 1693j. Suspension of obligations

If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other

person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

(Pub. L. 90-321, title IX, § 912, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3737.)

§ 1693k. Compulsory use of electronic fund transfers

No person may—

(1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or

(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

(Pub. L. 90-321, title IX, § 913, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3737.)

§ 1693l. Waiver of rights

No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this subchapter. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this subchapter or a waiver given in settlement of a dispute or action.

(Pub. L. 90-321, title IX, § 914, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3737.)

§ 1693m. Civil liability

(a) Individual or class action for damages; amount of award

Except as otherwise provided by this section and section 1693h of this title, any person who fails to comply with any provision of this subchapter with respect to any consumer, except for an error resolved in accordance with section 1693f of this title, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) Factors determining amount of award

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Unintentional violations; bona fide error

Except as provided in section 1693h of this title, a person may not be held liable in any action brought under this section for a violation of this subchapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Good faith compliance with rule, regulation, or interpretation of Board or approval of duly authorized official or employee of Federal Reserve System

No provision of this section or section 1693n of this title imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Board,

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) Notification to consumer prior to action; adjustment of consumer's account

A person has no liability under this section for any failure to comply with any requirement under this subchapter if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this subchapter, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 1693h of this title.

(f) Action in bad faith or for harassment; attorney's fees

On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees

reasonable in relation to the work expended and costs.

(g) Jurisdiction of courts; time for maintenance of action

Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation

(Pub. L. 90-321, title IX, § 915, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3737.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1693f of this title.

§ 1693n. Criminal liability

(a) Violations respecting giving of false or inaccurate information, failure to provide information, and failure to comply with provisions of this subchapter

Whoever knowingly and willfully—

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this subchapter or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this subchapter;

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Violations affecting interstate or foreign commerce

Whoever—

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating $1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce, and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating $500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) "Debit instrument" defined

As used in this section, the term "debit instrument" means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

(Pub. L. 90-321, title IX, § 916, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3738.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1693m of this title.

§1693o. Administrative enforcement

(a) Enforcing agencies

Compliance with the requirements imposed under this subchapter shall be enforced under—

(1) section 1818 of title 12, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 1464(d) of title 12, section 1730 of title 12, and sections 1426(i) and 1437 of title 12, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(4) the Federal Aviation Act of 1958 [49 U.S.C. 1301 et seq.], by the Civil Aeronautics Board, with respect to any air carrier or foreign air carrier subject to that Act; and

(5) the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Ex-

change Commission, with respect to any broker or dealer subject to that Act.

(b) Violations of subchapter deemed violations of pre-existing statutory requirements; additional powers

For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law.

(c) Overall enforcement authority of Federal Trade Commission

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(Pub. L. 90–321, title IX, § 917, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3739.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Federal Aviation Act of 1958, referred to in subsec. (a)(4), is Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(5), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

TRANSFER OF FUNCTIONS

All functions vested in the Administrator of the National Credit Union Administration were transferred and vested in the National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693b, 1693p of this title.

§ 1693p. Reports to Congress

(a) Not later than twelve months after the effective date of this subchapter and at one-year intervals thereafter, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this subchapter, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with this subchapter is being achieved, and a summary of the enforcement actions taken under section 1693o of this title. In such report, the Board shall particularly address the effects of this subchapter on the costs and benefits to financial institutions and consumers, on competition, on the introduction of new technology, on the operations of financial institutions, and on the adequacy of consumer protection. The report of the Attorney General shall also contain an analysis of the impact of this subchapter on the operation, workload, and efficiency of the Federal courts.

(b) In the exercise of its functions under this subchapter, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of persons subject to this subchapter.

(Pub. L. 90–321, title IX, § 918, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3740.)

REFERENCES IN TEXT

For effective date of this subchapter, referred to in subsec. (a), see section 921 of Pub. L. 90–321, set out as an Effective Date note under section 1693 of this title.

§ 1693q. Relation to State laws

This subchapter does not annul, alter, or affect the laws of any State relating to electronic fund transfers, except to the extent that those laws are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency. A State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection afforded by this subchpater. The Board shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Board, determine whether a State requirement is inconsistent or affords greater protection. If the Board determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of that State for a good faith failure to comply with

that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This subchapter does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

(Pub. L. 90-321, title IX, § 919, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3741.)

§ 1693r. Exemption for State regulation

The Board shall by regulation exempt from the requirements of this subchapter any class of electronic fund transfers within any State if the Board determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

(Pub. L. 90-321, title IX, § 920, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3741.)

CHAPTER 42—INTERSTATE LAND SALES

§ 1702. Exemptions

(a) Sale or lease of lots generally

Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to—

[*See main edition for text of (1) and (2)*]

(3) the sale or lease of any improved land on which there is a residential, commercial, condominium or industrial building, or to the sale or lease of land under a contract obligating the seller to erect such a building thereon within a period of two years;

[*See main edition for text of (4) to (9)*]

(10) the sale or lease of real estate which is free and clear of all liens, encumbrances, and adverse claims if each and every purchaser or his or her spouse has made a personal on-the-lot inspection of the real estate which he purchased and if the developer executes a written affirmation to that effect to be made a matter of record in accordance with rules and regulations of the Secretary. As used in this subparagraph, the terms "liens", "encumbrances", and "adverse claims" do not refer to United States land patents or Federal grants and reservations similar to United States land patents, nor to property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, nor to taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable, nor to beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, if (A) the developer, prior to the time the contract of sale or lease is entered into, has furnished each purchaser or lessee with a statement, the form and content of which has been approved by the Secretary, setting forth in descriptive and concise terms all such reservations, taxes, assessments, and restrictions which are applicable to the lot to be purchased or leased, and (B) receipt of such statement has been acknowledged in writing by the purchaser or lessee, and a copy of the acknowledged statement is filed with the Secretary in accordance with such rules and regulations as he may require; or

(11) the sale or lease of real estate which is zoned by the appropriate governmental authority for industrial or commercial development or which is restricted to such use by a declaration of covenants, conditions, and restrictions which has been recorded in the official records of the city or county in which such real estate is located, when—

[*See main edition for text of (A) to (E)*]

(b) Sale or lease of lots in municipality or county with minimum standards

Unless the method of disposition is adopted by[1] the purpose of evasion of this chapter, the requirements of sections 1704 to 1707 of this title shall not apply to the sale or lease of a lot which is located within a municipality or county where a unit of local government specifies minimum standards for the development of subdivision lots taking place within its boundaries, when—

(1) the subdivision meets all local codes and standards and is either zoned for single family residences or, in the absence of a zoning ordinance, is limited exclusively to single family residences;

(2) the lot is situated on a paved, public street or highway which has been built to a standard acceptable to the unit of local government in which the subdivision is located or a bond or other surety acceptable to the municipality or county in the full amount of the cost of the improvements has been posted to assure completion to such standards and the unit of local government has accepted or is obligated to accept the responsibility of maintaining the public street or highway;

(3) at the time of closing, potable water, sanitary sewage disposal, and electricity have been extended to the lot or the unit of local government is obligated to install such facilities within 180 days. For subdivisions which do not have a central water or sewage disposal system, rather than installation of water or sewer facilities, there must be assurances that an adequate potable water supply is available year-round and that the lot is approved for the installation of a septic tank;

(4) the contract of sale requires delivery of a warranty deed to the purchaser within 180 days after the signing of the sales contract;

(5) a policy of title insurance is issued in connection with the transaction showing that, at the time of closing, title to the lot purchased or leased is vested in the seller or

[1] So in original. Probably should be "for".

lessor subject only to such exceptions as may be approved in writing by the purchaser or lessee prior to recordation of the deed or execution of the lease;

(6) each and every purchaser or spouse has made a personal, on the lot inspection of the lot purchased or leased, prior to signing of a contract to purchase or lease; and

(7) there are no direct mail or telephone solicitations or offers of gifts, trips, dinners, or other such promotional techniques to induce prospective purchasers or lessees to visit the subdivision or to purchase or lease a lot.

(c) Rules and regulations

The Secretary may from time to time, pursuant to rules and regulations issued by him, exempt from any of the provisions of this chapter any subdivision or any lots in a subdivision, if he finds that the enforcement of this chapter with respect to such subdivision or lots is not necessary in the public interest and for the protection of purchasers by reason or the small amount involved or the limited character of the public offering.

(As amended Pub. L. 95-557, title IX, § 907, Oct. 31, 1978, 92 Stat. 2127.)

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-557, § 907(a)(1), added "condominium" after "commercial".

Subsec. (a)(10). Pub. L. 95-557, § 907(a)(2), added "United States land patents or Federal grants and reservations similar to United States land patents, nor to" following "do not refer to".

Subsec. (a)(11). Pub. L. 95-557, § 907(a)(3), added "or which is restricted to such use by a declaration of covenants, conditions, and restrictions which has been recorded in the official records of the city or county in which such real estate is located" preceding "when".

Subsec. (b). Pub. L. 95-557, § 907(b)(1), (2), redesignated existing subsec. (b) as (c) and added a new subsec. (b).

Subsec. (c). Pub. L. 95-557, § 907(b)(2), redesignated former subsec. (b) as subsec. (c).

§ 1704. Registration of subdivisions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1708 of this title.

§ 1705. Information required in statement of record

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1707 of this title.

§ 1706. Effective date of statements of record and amendments thereto

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1703 of this title.

§ 1707. Information required in property report; use for promotional purposes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1703 of this title.

§ 1715. Administration; delegation of functions, duties and powers; hearing officers; appeals from decisions; public hearings; record of hearings

(a) The authority and responsibility for administering this chapter shall be in the Secretary of Housing and Urban Development who may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, hearing, determining, ordering, or otherwise acting as to any work, business, or matter under this chapter. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department in compliance with sections 3105, 3344, 5372, and 7521 of title 5. The Secretary shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

[*See main edition for text of* (b)]

(As amended Pub. L. 95-251, § 2(a)(5), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title VIII, § 801(a)(3)(J), Oct. 13, 1978, 92 Stat. 1222.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 substituted "5372" for "5362".

Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a) (4) of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 5361 of Title 5, Government Organization and Employees.

CHAPTER 46—MOTOR VEHICLE INFORMATION AND COST SAVINGS

SUBCHAPTER I—BUMPER STANDARDS

§ 1916. Prohibited acts

(a) Failure to comply with bumper standard, rule, recordkeeping, inspection, or certification requirements

No person shall—

(1) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the date any applicable Federal bumper standard takes effect under this subchapter unless it is in conformity with such standard;

(2) fail to comply with any rule prescribed by the Secretary under this subchapter;

(3) fail to keep specified records or refuse access to or copying of records, or fail to make reports or provide items or information, or fail or refuse to permit entry or inspection, as required under this subchapter or any rule issued thereunder; or

(4)(A) fail to furnish a certificate required by section 1915(c) of this title, or (B) issue a certificate required by such subsection to the effect that a passenger motor vehicle or passenger motor vehicle equipment conforms to all applicable bumper standards, if such person knows, or in the exercise of due care has reason to know, that such certificate is false or misleading in a material respect.

[*See main edition for text of* (b), (c)]

CODIFICATION

Subsec. (a) is set out in this supplement to correct typographical error appearing in the main edition.

SUBCHAPTER II—AUTOMOBILE CONSUMER INFORMATION STUDY

§ 1943. Requests by Secretary for information from other Federal departments, etc; compliance; detail of personnel by head of other Federal departments, etc.; reimbursement

CODIFICATION

Typographic error appears in the credits for this section in the main edition. The credits should read: (Pub. L. 92-513, title II, § 203, Oct. 20, 1972, 86 Stat. 957.)

SUBCHAPTER III—DIAGNOSTIC INSPECTION DEMONSTRATION PROJECTS

PART B—SPECIAL DEMONSTRATION PROJECTS

§ 1963a. Duties of Secretary

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SUBCHAPTER IV—ODOMETER REQUIREMENTS

§ 1990d. Inspections and investigations

CODIFICATION

Part II of the Interstate Commerce Act, referred to in subsec. (a)(3), which was classified to chapter 8 (§ 301 et seq.) of Title 49, Transportation, was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

SUBCHAPTER V—IMPROVING AUTOMOTIVE EFFICIENCY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 26 section 6427.

§ 2001. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2004, 2006, 2012 of this title; title 26 section 4064; title 42 section 6291.

§ 2002. Average fuel economy standards

[*See main edition for text of* (a) *to* (c)]

(d) Application for modification of standards

[*See main edition for text of* (1), (2)]

(3) For purposes of this subsection:

[*See main edition for text of* (A) *to* (C)]

(D) Each of the following is a category of Federal standards:

(i) Emissions standards under section 202 of the Clean Air Act [42 U.S.C. 7521] and emissions standards applicable by reason of section 209(b) of such Act [42 U.S.C. 7543(b)].

(ii) Motor vehicle safety standards under the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.].

(iii) Noise emission standards under section 6 of the Noise Control Act of 1972 [42 U.S.C. 4905].

(iv) Property loss reduction standards under subchapter I of this chapter.

[*See main edition for text of* (E), (4), *and* (e) *to* (g)]

(h) Consultation with Secretary of Energy; impact of proposed standards upon conservation goals; comments

The Secretary shall consult with the Secretary of Energy in carrying out his responsibilities under this section. The Secretary shall, before issuing any notice proposing under subsection (a), (b), (d), or (f) of this section, to establish, reduce, or amend an average fuel economy standard, provide the Secretary of Energy with a period of not less than ten days from the receipt of the notice during which the Secretary of Energy may, upon concluding that the proposed standard would adversely affect the conservation goals set by the Secretary of Energy, provide written comments to the Secretary concerning the impacts of the proposed standard upon those goals. To the extent that the Secretary does not revise the proposed standard to take into account any comments by the Secretary of Energy regarding the level of the proposed standard, the Secretary shall include the unaccommodated comments in the notice.

(i) Notification of Secretary of Energy; comments

The Secretary shall, before taking action on any final standard under this section or any modification of or exemption from such standard, notify the Secretary of Energy and provide such Secretary with a reasonable period of time to comment thereon.

(As amended Pub. L. 95-91, title III, § 305, Aug. 4, 1977, 91 Stat. 580.)

CODIFICATION

Subsec. (d)(3)(D) is set out in this supplement to reflect the current citations for sections 202 and 209 of the Clean Air Act, which were reclassified from sections 1857f-1 and 1857f-6a to sections 7521 and 7543, respectively, of Title 42, The Public Health and Welfare, on enactment of Pub. L. 95-95.

Subsecs. (h) and (i) of this section were in the original designated as (g) and (h), respectively, and have

been editorially changed to conform to the apparent intent of Congress.

AMENDMENTS

1977—Subsecs. (h), (i). Pub. L. 95-91 added subsecs. (h) and (i).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2001, 2003, 2004, 2005, 2007, 2008, 2010 of this title; title 26 section 6427.

§ 2003. Calculation of average fuel economy

[See main edition for text of (a) to (c)]

(d) Testing and calculation procedures

(1) Fuel economy for any model type shall be measured, and average fuel economy of a manufacturer shall be calculated, in accordance with testing and calculation procedures established by the EPA Administrator, by rule. Procedures so established with respect to passenger automobiles (other than for purposes of section 2006 of this title) shall be the procedures utilized by the EPA Administrator for model year 1975 (weighed 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. Procedures under this subsection, to the extent practicable, shall require that fuel economy tests be conducted in conjunction with emissions tests conducted under section 206 of the Clean Air Act [42 U.S.C. 7525]. The EPA Administrator shall report any measurements of fuel economy and any calculations of average fuel economy to the Secretary.

[See main edition for text of (2), (3), and (e), (f)]

CODIFICATION

Subsec. (d)(1) is set out in this supplement to reflect the current citation for section 206 of the Clean Air Act, which was reclassified from section 1857f-5 to section 7525 of Title 42, The Public Health and Welfare, on enactment of Pub. L. 95-95.

§ 2006. Labeling

(a) Label required on automobile; contents

(1) Except as otherwise provided in paragraph (2), each manufacturer shall cause to be affixed, and each dealer shall cause to be maintained, on each automobile manufactured in any model year after model year 1976, in a prominent place, a label—

[See main edition for text of (A)]

(B) containing a statement that written information (as described in subsection (b)(1) of this section) with respect to the fuel economy of other automobiles manufactured in such model year (whether or not manufactured by such manufacturer) is available from the dealer in order to facilitate comparsion among the various model types,

(C) containing in the case of any automobile, the sale of which is subject to any Federal tax imposed with respect to automobile fuel efficiency, a statement indicating the amount of such tax, and

(D) containing any other information authorized or required by the EPA Administrator which relates to information described in subparagraph (A) or (B).

[See main edition for text of (2)]

(3) The form and content of the labels required under paragraphs (1) and (2), and the manner in which such labels shall be affixed, shall be prescribed by the EPA Administrator by rule. The time and manner by which the statement referred to in paragraph (1)(C) must be included on any label may be prescribed so as to take into account any special circumstances or characteristics. The EPA Administrator may permit a manufacturer to comply with this paragraph by permitting such manufacturer to disclose the information required under this subsection on the label required by section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

[See main edition for text of (b)]

(c) Violations

[See main edition for text of (1)]

(2) As used in this section, the term "dealer" has the same meaning as such term has in section 2(e) of the Automobile Information Disclosure Act (15 U.S.C. 1231(e)) except that in applying such term to this section, the term "automobile" has the same meaning as such term has in section 2001(1) of this title (taking into account paragraph (3) of this subsection).

(3) As used in this section, the term "automobile" includes any automobile with a gross vehicle weight rating of 8,500 pounds or less, notwithstanding any lack of determination required of the Secretary under section 2001(1)(B) (ii) or (iii) of this title.

[See main edition for text of (d) and (e)]

(As amended Pub. L. 95-619, title IV, §§ 401(a), 403(a), (b), Nov. 9, 1978, 92 Stat. 3254, 3256, 3257.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-619, § 403(a), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (a)(3). Pub. L. 95-619, § 403(b), provided that the time and manner by which the tax statement required by par. (1)(C) was to be included on any label could be prescribed so as to take into account any special circumstances or characteristics.

Subsec. (c)(2). Pub. L. 95-619, § 401(a)(2), authorized taking into account the provisions of par. (3) when defining the term "automobile" as used in this section.

Subsec. (c)(3). Pub. L. 95-619, § 401(a)(1), added subsec. (c)(3).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 401(c) of Pub. L. 95-619 provided that: "The amendment made by subsection (a) [adding subsec. (c)(3) and amending subsec. (c)(2) of this section] shall be effective for automobiles manufactured in model years after model year 1979."

Section 403(c) of Pub. L. 95-619 provided that: "The amendments made by this section [amending subsec. (a)(1)(C) of this section] shall not take effect unless and until there is in effect a Federal tax imposed with respect to automobile fuel efficiency which is enacted during the Ninety-fifth Congress."

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

CONSTRUCTION OF 1978 AMENDMENT

Section 401(b) of Pub. L. 95–619 provided that: "The amendment made by this section [amending subsec. (c) of this section] shall not be construed to affect the authority in section 506 of the Motor Vehicle Information and Cost Savings Act [this section] to require labels or other information for fuel economy for automobiles rated in excess of 8,500 pounds gross vehicle weight."

STUDY ON VALIDITY OF FUEL ECONOMY ESTIMATES; REPORT TO CONGRESS

Section 404 of Pub. L. 95–619 provided that: "Within six months after the date of the enactment of this Act [Nov. 9, 1978], the Environmental Protection Agency, in consultation with the Secretary of Energy and the Secretary of Transportation and after an opportunity for public comment, shall submit to the Congress a detailed report on the degree to which fuel economy estimates required to be used in new car fuel economy labeling and in the annual fuel economy mileage guide required under section 506 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006) provide a realistic estimate of average fuel economy likely to be achieved by the driving public. Such report shall include such recommendations as the Environmental Protection Agency deems appropriate based on report and written findings or conclusions stated therein, other than recommendations concerning changes or alterations in the testing and calculation procedures and methods measuring fuel economy under such Act [this chapter] as utilized by the Environmental Protection Agency for model year 1975 passenger automobiles. Nothing in this section shall authorize such agency to make any changes or alterations in such procedures and methods in effect for such model year for measuring automobile fuel economy."

§ 2008. Civil penalty

[See main edition for text of (a)]

(b) Amount of penalty; compromise or modification

[See main edition for text of (1) and (2)]

(3) The amount of such civil penalty shall be assessed by the Secretary by written notice. The Secretary shall have the discretion to compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection against any person, except that any civil penalty assessed for a violation of section 2007(1) or (2) of this title may be so compromised, modified, or remitted only to the extent—

[See main edition for text of (A) to (C) and last sentence, (4) to (6); (c)]

(d) Prescription of additional amount by rule

(1)(A) The Secretary shall, by rule in accordance with the provisions of this subsection and subsection (e) of this section, substitute a higher amount for the amount per tenth of a mile per gallon which would be used to calculate the civil penalty under subsection (b)(1) of this section in the absence of such rule, if the Secretary finds that—

(i) the additional amount of the civil penalty which may be imposed under such rule will result in, or substantially further, substantial energy conservation for automobiles in future model years for which such higher penalty may be imposed; and

(ii) subject to subparagraph (B), such additional amount of civil penalty will not result in substantial deleterious impacts on the economy of the United States or of any State or region of any State.

(B) Any findings under subparagraph (A)(ii) may be made only if the Secretary finds that it is likely that—

(i) such additional amount of civil penalty will not cause a significant increase in unemployment in any State or region thereof;

(ii) such additional amount will not adversely affect competition; and

(iii) such additional amount will not cause a significant increase in automobile imports.

(2) Any rule under paragraph (1) may not provide that the amount per tenth of a mile per gallon used to calculate the civil penalty under subsection (b)(1) of this section be less than $5.00 or more than $10.00.

(3) Any rule prescribed under paragraph (1) shall be effective for the later of—

(A) automobile model years beginning after model year 1981, or

(B) automobile model years beginning at least 18 months after such rule becomes final.

(4) Any rule prescribed under paragraph (1) shall provide that the amount per tenth of a mile per gallon used to calculate a credit under subsection (a)(3) of this section for any model year shall equal the amount per tenth of a mile per gallon applicable to the calculation of the civil penalty for which the credit is allowed.

(e) Publication of proposed rule; hearing; evidence; publication of final rule; judicial review

(1)(A) After the Secretary of Transportation develops a proposed rule pursuant to subsection (d) of this section, he shall publish such proposed rule in the Federal Register, together with a statement of the basis for such rule, and provide copies thereof to the manufacturers. He shall then provide a period of public comment on such rule of at least 45 days for written comments thereon. A copy of any such proposed rule shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public concerning such proposed rule.

(B) After such written comment period, any interested person, (including the Federal Trade Commission) shall be afforded an opportunity to present oral data, views, and arguments at a public hearing concerning such proposal. At such hearing such interested person (including the Federal Trade Commission) shall have an opportunity to question—

(i) other interested persons who make oral presentations,

(ii) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or in the consideration thereof, and

(iii) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation;

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(C) A rule subject to this subsection may not be issued except on consideration of the whole record supported by, and in accordance with, the reliable, probative, and substantial evidence.

(D) A transcript shall be kept of any such public hearing made in accordance with this section and such transcripts and written comments shall be available to the public at the cost of reproduction.

(2) If any final rule is prescribed by the Secretary after such public comment period under subsection (d) of this section it shall be published in the Federal Register, together with each of the findings required by subsection (d) of this section.

(3)(A) Any person aggrieved by any final rule under subsection (d) of this section may at any time before the 60th day after the date such rule is published under paragraph (2) file a petition with the United States Court of Appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written and oral proceedings on which the rule was based, as provided in section 2112 of title 28.

(B) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. No rule may be affirmed unless supported by substantial evidence.

(C) The judgment of the court affirming or setting aside, in whole or in part, any such rule be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(4) In the case of any information which is provided the Secretary or the court during the consideration and review of any such rule and which is determined to be confidential by the Secretary pursuant to the provision of section 796(d) of this title, any disclosure of such information by an officer or employee of the United States or of any department or agency thereof, except in an in camera proceeding by the Secretary or the court, shall be deemed a violation of section 1905 of title 18.

(As amended Pub. L. 95-619, title IV, § 402, Nov. 9, 1978, 92 Stat. 3255.)

CODIFICATION

Subsec. (b)(3) is set out in part in this supplement to correct typographical error appearing in the main edition.

AMENDMENTS

1978—Subsecs. (d), (e). Pub. L. 95-619 added subsecs. (d) and (e).

CHAPTER 47—CONSUMER PRODUCT SAFETY

Sec.
2082. Interim cellulose insulation safety standard [New].
(a) Applicability of specification of General Services Administration; authority and effect of interim standard; modifications; criteria; labeling requirements.
(b) Scope of judicial review.
(c) Enforcement; violations; promulgation of final standard; procedures applicable to promulgation; revision of interim standard; procedures applicable to revision.
(d) Reporting requirements of other Federal departments, agencies, etc. of violations.
(e) Reporting requirements of Commission to Congressional committees; contents, time of submission, etc.
(f) Compliance with certification requirements; implementation; waiver; rules and regulations.
(g) Authorization of appropriations.

§ 2051. Congressional findings and declaration of purpose

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-319, § 1, July 11, 1978, 92 Stat. 386, provided: "That this Act [enacting section 2082 of this title, amending section 2068 of this title, and enacting provision set out as a note under section 2082 of this title] may be cited as the 'Emergency Interim Consumer Product Safety Standard Act of 1978'."

§ 2053. Consumer Product Safety Commission

(a) Establishment; Chairman

An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

[*See main edition for text of* (b) *to* (g)]

(h) Civil action against the United States

Subsections (a) and (h) of section 2680 of title 28 do not prohibit the bringing of a civil action on a claim against the United States which—

(1) is based upon—

(A) misrepresentation or deceit on the part of the Commission or any employee thereof, or

(B) any exercise or performance, or failure to exercise or perform, a discretionary

function on the part of the Commission or any employee thereof, which exercise, performance, or failure was grossly negligent; and

(2) is not made with respect to any agency action (as defined in section 551(13) of title 5).

In the case of a civil action on a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, no judgment may be entered against the United States unless the court in which such action was brought determines (based upon consideration of all the relevant circumstances, including the statutory responsibility of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable.

(As amended Pub. L. 95-631, § 2, Nov. 10, 1978, 92 Stat. 3742.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-631, § 2(a), substituted "Senate. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time." for "Senate, one of whom shall be designated by the President as Chairman. The Chairman, when so designated shall act as Chairman until the expiration of his term of office as Commissioner."

Subsec. (h)(1)(A), (B). Pub. L. 95-631, § 2(b), struck out "before January 1, 1978," following "deceit" in cl. (A) and "before January 1, 1978" following "employee thereof" in cl. (B).

§ 2056. Consumer product safety standards

[*See main edition for text of* (a)]

(b) Proceedings for development of standards; notice; development period; consultation; expeditious development by Commission; publication; comments

(1) A proceeding for the development of a consumer product safety standard under this chapter shall be commenced by the publication in the Federal Register of a notice which shall—

(A) identify the product and the nature of the risk of injury associated with the product;

(B) state the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury;

(C) include information with respect to any existing standard known to the Commission which may be relevant to the proceeding;

(D) include—

(i) an invitation for any person (other than the Commission), within thirty days after the date of publication of the notice, to submit to the Commission an existing standard as the proposed consumer product safety standard; and

(ii)(I) an invitation for any person (other than the Commission), within thirty days after the date of publication of the notice, to offer to develop the proposed consumer product safety standard; or

(II) a statement that the Commission intends to develop the proposed consumer product safety standard; and

(E) specify the period of time in which the offeror of an accepted offer and the Commission, or the Commission acting by itself, is to develop the proposed standard.

(2) After consultation with such interested parties as the Commission shall deem necessary, the Commission may develop a consumer product safety standard without making any invitation specified in paragraph (1)(D)(ii)(I) and may publish such standard as a proposed consumer product safety rule whenever the Commission determines, taking into account—

(i) the nature of the risk of injury associated with such product,

(ii) the expertise of the Commission with respect to such risk of injury,

(iii) the expertise of the Commission in developing consumer product safety standards, and

(iv) the resources available to the Commission and the priorities established by the Commission,

that to develop a consumer product safety standard which would adequately protect the public from such risk of injury, it is more expeditious for the Commission to develop the standard than to proceed under paragraph (1)(D)(ii)(I) for its development. The Commission shall give interested persons opportunity to submit written comments to the Commission during the thirty-day period following publication of such determination under paragraph (1).

(c) Publications of proposed safety rules developed from existing standards

If the Commission determines—

(1) that any standard submitted to it pursuant to an invitation made under subsection (b)(1)(D)(i) of this section, or

(2) that any standard (other than one submitted under subsection (b)(1)(D)(i) of this section) issued, adopted, or proposed by any Federal department or agency (other than the Commission) or by any other qualified agency, organization, or institution,

if promulgated (in whole, in part, or in combination with any other standard described in paragraph (1) or (2) or any part of such a standard) as a consumer product safety rule, would eliminate or reduce an unreasonable risk of injury associated with a consumer product, the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed consumer product safety rule. In the case of a standard described in paragraph (2), the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed consumer product safety rule without making an invitation under subsection (b)(1)(D)(i) of this section.

(d) Offers to develop proposed standards; Commission's contribution to development costs; regulations

(1) Except as provided by subsection (b)(2) and by subsection (c) of this section, the Commission shall accept one, and may accept more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed by subsection (b)(1)(D)(ii)(I) of this section, if it determines that the offeror is technically competent, is likely to develop an appropriate standard within the period specified in the invitation under subsection (b)(1)(E) of this section, and will comply with regulations of the Commission under paragraph (3) of this subsection. The Commission shall publish in the Federal Register the name and address of each person whose offer it accepts, and a summary of the terms of such offer as accepted.

(2) If an offer is accepted under this subsection or if any person participates with the Commission in the development of a consumer product safety standard under subsection (b)(2)(A) or subsection (e) of this section, the Commission may agree to contribute to the offeror's cost in developing a proposed consumer product safety standard or the person's cost with respect to such participation, in any case in which the Commission determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror or person is financially responsible. Regulations of the Commission shall set forth the items of cost in which it may participate, and shall exclude any contribution to the acquisition of land or buildings. Payments under agreements entered into under this paragraph may be made without regard to section 529 of title 31.

[*See main edition for text of (3)*]

(4) The Commission shall prescribe regulations governing the development of proposed consumer product safety rules by the Commission under subsection (b)(2) and subsection (e)(1) of this section. Such regulations shall include the requirements specified in subparagraphs (B), (C), and (D) of paragraph (3).

(e) Development of proposed safety rules by Commission; publication

(1) If the Commission publishes a notice pursuant to subsection (b)(1)(D)(ii)(I) of this section for the development of a consumer product safety standard and if the Commission does not, within 30 days after the date of publication of such notice, accept an offer to develop such a standard, then the Commission may develop a proposed consumer safety rule with respect to such product and publish such proposed rule.

(2) If the Commission accepts an offer to develop a proposed consumer product safety standard under subsection (b)(1)(D)(ii)(I) of this section, the Commission may not develop a proposed consumer product safety rule or publish such proposed rule unless—

(A) the development period specified in subsection (b)(1)(E) of this section for such standard ends;

(B) no offeror whose offer was accepted is making satisfactory progress in the development of such proposed standard; or

(C) the sole offer accepted under subsection (b)(1)(D)(ii)(I) of this section is that of an offeror which is the manufacturer, distributor, or retailer of a consumer product proposed to be regulated by the consumer product safety standard.

(f) Termination of proceedings; publication in Federal Register; reasons for nonpublication of proposed standards

If the Commission publishes a notice pursuant to subsection (b) of this section and the Commission does not publish a proposed consumer product safety standard within forty-five days after the expiration of the period specified in subsection (b)(1)(E) of this section, the Commission shall—

(1) by notice published in the Federal Register, terminate the proceeding begun by such notice published pursuant to subsection (b) of this section; or

(2) publish in the Federal Register the reasons for not publishing the proposed standard, and specify the time period within which either such standard will be published or the proceeding begun by such notice published pursuant to subsection (b) of this section will be terminated without publication of such proposed standard.

The reasons referred to in paragraph (2) may include a statement that the Commission is considering other approaches (such as a voluntary consumer safety standard adopted by persons who would be subject to such proposed standard) to eliminate the unreasonable risk of injury that is the subject of such proceeding.

(As amended Pub. L. 95-631, §§ 3, 4(a)-(c), 5, Nov. 10, 1978, 92 Stat. 3742-3744.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-631, § 3, designated existing provision as par. (1), and in par. (1) as so redesignated, redesignated pars. (1) to (4) as subpars. (A) and (D), in subpar. (D) as so redesignated, inserted provision including as a means of commencing a proceeding, a publication in the Federal Register of a statement that the Commission intends to develop the proposed consumer product safety standard, added subpar. (E), struck out provision that the period specified within which the offeror of an accepted offer develops the proposed standard be a period ending 150 days after the date the offer was accepted unless the Commission for good cause found, and included such finding in the notice that a different period was appropriate, and added par. (2).

Subsec. (d)(1). Pub. L. 95-631, § 4(a)(1), inserted following "as provided by" the words "subsection (b)(2) and by" and substituted references to subsec. (b)(1)(D)(ii)(I) for (b)(4)(B) of this section and subsec. (b)(1)(E) for (b) of this section.

Subsec. (e). Pub. L. 95-631, § 5, amended subsec. (e) generally by adding provisions relating to subsec. (b)(1)(D) and deleting provisions for publication of a proposed consumer product safety rule, in lieu of acceptance of an offer under subsec. (d), where a standard had been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution and the standard if promulgated under the chapter would eliminate or reduce the unreasonable risk of injury associated with the product.

Subsec. (d)(2). Pub. L. 95-631, § 4(a)(2)(A)-(C), inserted in the first sentence "or if any person participates with the Commission in the development of a consumer product safety standard under subsection

(b)(2)(A) or subsection (e) of this section" after "under this subsection", "or the person's cost with respect to such participation" after "safety standards" and "or person" after "offeror".

Subsec. (d)(4). Pub. L. 95-631, § 4(a)(3), added par. (4).

Subsec. (e). Pub. L. 95-631, § (4)(b), amended provisions generally, and among other changes, substituted references to subsec. (b)(1)(D)(ii)(I) of this section for prior references to subsec. (b) of this section, and deleted par. (3) defining the development period, now covered in subsec. (b)(1)(E) of this section.

Subsec. (f). Pub. L. 95-631, § 4(c), amended provisions generally, and among other changes, reduced the period within which to publish a proposed consumer product safety standard to forty-five days from 150 days and required the publication in the Federal Register of the reasons for not publishing the proposed standard, including a statement indicative of the taking of other approaches such as a voluntary consumer safety standard adopted by persons to be subject to the proposed standard.

§ 2058. Administrative procedure governing promulgation of consumer product safety rules

(a) Promulgation; withdrawal of notice of proceeding

(1) Within 60 days after the publication under section 2056 or 2057 of this title of a proposed consumer product safety rule respecting a risk of injury associated with a consumer product, the Commission shall—

(A) promulgate a consumer product safety rule respecting the risk of injury associated with such product if it makes the findings required under subsection (c) of this section, or

(B) withdraw by rule the applicable notice of proceeding if it determines that such rule is not (i) reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, or (ii) in the public interest;

except that the Commission may extend such 60-day period for good cause shown (if it publishes its reasons therefor in the Federal Register).

(2) Consumer product safety rules which have been proposed under section 2056 or 2057 of this title shall be promulgated pursuant to section 553 of title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

[*See main edition for text of* (b) *to* (e)]

(As amended Pub. L. 95-631, § 4(d), Nov. 10, 1978, 92 Stat. 3744.)

AMENDMENTS

1978—Subsec. (a)(1), (2). Pub. L. 95-631 substituted in pars. (1) and (2) reference to section 2056 of this title for prior reference to section 2056(c), (e)(1), or (f) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2056, 2057, 2060, 2067, 2068, 2076, 2082 of this title.

§ 2060. Judicial review of consumer product safety rules

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2058, 2059, 2082 of this title.

§ 2063. Product certification and labeling

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2066, 2068, 2082 of this title.

§ 2067. Exemption of exports

(a) Risk of injury to consumers within United States

This chapter shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless (A) such consumer product is in fact distributed in commerce for use in the United States, or (B) the Commission determines that exportation of such product presents an unreasonable risk of injury to consumers within the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this chapter shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

(b) Statement of exportation: filing period, information; notification of foreign country; petition for minimum filing period: good cause

Not less than thirty days before any person exports to a foreign country any product—

(1) which is not in conformity with an applicable consumer product safety standard in effect under this chapter, or

(2) which is declared to be a banned hazardous substance by a rule promulgated under section 2058 of this title,

such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis for such safety standard or rule. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such product, the country and port of destination of such product, and the quantity of such product that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(As amended Pub. L. 95-631, § 6(a), Nov. 10, 1978, 92 Stat. 3745.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-631, § 6(a)(1), designated existing text as subsec. (a) and clause (A) and added clause (B).

Subsec. (b). Pub. L. 95-631, § 6(a)(2), added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2068 of this title.

§ 2068. Prohibited acts

(a) It shall be unlawful for any person to—

[See main edition for text of (1) to (7)]

(8) fail to comply with any rule under section 2062 of this title (relating to prior notice and description of new consumer products);

(9) fail to comply with any rule under section 2076(e) of this title (relating to provision of performance and technical data); and

(10) fail to comply with any rule or requirement under section 2082 of this title (relating to labeling and testing of cellulose insulation).

(10)[1] fail to file a statement with the Commission pursuant to section 2067(b) of this title.

[See main edition for text of (b)]

(As amended Pub. L. 95-319, § 3(b), July 11, 1978, 92 Stat. 390; Pub. L. 95-631, § 6(b), Nov. 10, 1978, 92 Stat. 3745.)

AMENDMENTS

1978—Subsec. (a)(10). Pub. L. 95-631 added par. (10), providing that it be unlawful to fail to file a statement with the Commission pursuant to section 2067(b) of this title.

Pub. L. 95-319 added par. (10), providing that it be unlawful to fail to comply with any rule or requirement under section 2082 of this title.

§ 2069. Civil penalties

(a) Amount of penalty

(1) Any person who knowingly violates section 2068 of this title shall be subject to a civil penalty not to exceed $2,000 for each such violation. Subject to paragraph (2), a violation of section 2068(a)(1), (2), (4), (5), (6), (7), (8), (9), or (10) of this title shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations. A violation of section 2068(a)(3) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations.

[See main edition for text of (2); (b) and (c)]

(As amended Pub. L. 95-631, § 6(c), Nov. 10, 1978, 92 Stat. 3745.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-631 made violation of section 2068(a)(10) of this title a separate offense.

[1] So in original.

§ 2076. Additional functions of Consumer Product Safety Commission

[See main edition for text of (a) to (l)]

(m) Rules of Consumer Product Safety Commission; "rule" defined; study and report to Congress; impact analyses, other statements and materials, and noncompliance statement; deletion proposals; notification of Congress; review limitation; rulemaking record

(1) For purposes of this subsection, the term "rule" means—

(A) any rule prescribed by the Commission pursuant to section 2058 of this title;

(B) any rule prescribed by the Commission pursuant to section 1261(q)(1)(B) of this title;

(C) any rule prescribed by the Commission under section 1472 of this title; and

(D) any rule prescribed by the Commission under section 1193 of this title.

(2) Within 18 months after November 10, 1978, the Commission shall begin a study of all the rules which the Commission has issued and which are in effect on November 10, 1978. At the end of such 18-month period, the Chairman of the Commission shall submit a report to the Congress which shall, to the extent practicable and appropriate (taking into account the resources and priorities of the Commission)—

(A) recommend the deletion of particular rules and portions of rules, including reasons for such recommendations; and

(B) recommend the initiation of appropriate rulemaking proceedings under this chapter to make changes or modifications in particular rules or portions of rules.

(3) In any case in which the Commission proposes to delete any rule or portion of a rule during the 18-month period specified in paragraph (2), the Commission shall notify each House of the Congress of such proposal at the time such proposal is published in the Federal Register.

(4)(A) To the extent practicable and appropriate (taking into account the resources and priorities of the Commission), the Chairman of the Commission shall include in the report submitted to the Congress under this subsection, for each rule which the Commission has issued and which is in effect on November 10, 1978—

(i) an economic impact analysis which takes into account, for such rule, the cost impact on and benefits to consumers and affected businesses (with particular attention to small businesses);

(ii) a paperwork impact analysis containing—

(I) an estimate of the numbers of, and a description of the classes of, persons who are required to file reports, maintain records, and fulfill any of the information-gathering requirements under such rule;

(II) an estimate of the nature and amount of the information required to be filed in such reports, the frequency of such reports, the nature and number of records required to be kept by such persons, and the amount of time such persons would require, and the costs which would be incurred, to keep such records and make such reports; and

(III) a description of steps being taken by the Commission to ensure that there is no unnecessary duplication in recordkeeping and report filing resulting from such rule;

(iii) a judicial impact analysis showing the effect of such rule on the workload of the Federal courts; and

(iv) such other explanatory and supporting statements and materials as the Commission determines necessary and appropriate for congressional consideration of such report.

(B)(i) Except as provided in clause (ii), no material submitted to the Congress by the Chairman of the Commission under this paragraph shall be subject to any judicial review, including any judicial review to determine whether such material is sufficient to comply with the requirements of this paragraph. In the event the Chairman of the Commission finds that it is impractical or inappropriate to submit the information required under clauses (i) through (iii) of subparagraph (A), the Chairman of the Commission shall submit a statement as to why he cannot so comply.

(ii) If any material submitted to the Congress by the Chairman of the Commission under this paragraph also is included in any rulemaking record of the Commission, any determination regarding whether such material is subject to judicial review in connection with any review of such rulemaking record shall not be affected by the submission of such material to the Congress under this paragraph.

(As amended Pub. L. 95-631, § 11, Nov. 10, 1978, 92 Stat. 3748.)

AMENDMENTS

1978—Subsec. (m). Pub. L. 95-631 added subsec. (m).

§ 2080. Limitations on Consumer Product Safety Commission's jurisdiction

The Commission shall have no authority under this chapter to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.]; the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; or the Clean Air Act [42 U.S.C. 7401 et seq.]. The Commission shall have no authority under this chapter to regulate any risk of injury associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355(1) and (2) of the Public Health Service Act [42 U.S.C. 263c(1) and (2)]) if such risk of injury may be subjected to regulation under subpart 3 of part F of title III of the Public Health Service Act. [42 U.S.C. 263b et seq.].

(Pub. L. 92-573, § 31, Oct. 27, 1972, 86 Stat. 1232.)

REFERENCES IN TEXT

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see short Title note set out under section 7401 of Title 42 and Tables.

CODIFICATION

Section is set out in this supplement to reflect the current citation for the Clean Air Act, which was reclassified to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare, on enactment of Pub. L. 95-95.

§ 2081. Authorization of appropriations

(a) There are authorized to be appropriated for the purposes of carrying out the provisions of this chapter (other than the provisions of section 2076(h) of this title which authorize the planning and construction of research, development, and testing facilities) and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 2079 of this title, not to exceed—

(1) $51,000,000 for the fiscal year ending June 30, 1976;

(2) $14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976;

(3) $60,000,000 for the fiscal year ending September 30, 1977;

(4) $68,000,000 for the fiscal year ending September 30, 1978; and [1]

(5) $55,000,000 for the fiscal year ending September 30, 1979;

(6) $60,000,000 for the fiscal year ending September 30, 1980; and

(7) $65,000,000 for the fiscal year ending September 30, 1981.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 95-631, § 1, Nov. 10, 1978, 92 Stat. 3742.)

AMENDMENTS

1978—Subsec. (a)(5) to (7). Pub. L. 95-631 added par. (5) to (7).

§ 2082. Interim cellulose insulation safety standard

(a) Applicability of specification of General Services Administration; authority and effect of interim standard; modifications; criteria; labeling requirements

(1) Subject to the provisions of paragraph (2), on and after the last day of the 60-day period beginning on July 11, 1978, the requirements for flame resistance and corrosiveness set forth in the General Services Administration's specification for cellulose insulation, HH-I-515C (as such specification was in effect on February 1, 1978), shall be deemed to be an interim consumer product safety standard which shall have all the authority and effect of any other consumer product safety standard promulgated by the Commission under this chapter. During the 45-day period beginning on July 11, 1978, the Commission may make, and shall publish in the Federal Register, such technical, nonsubstantive changes in such requirements as it deems appropriate to make such requirements suitable for promulgation as a consumer product safety standard. At the end to the 60-day period speci-

[1] So in original. The word "and" probably should not appear.

fied in the first sentence of this paragraph, the Commission shall publish in the Federal Register such interim consumer product safety standard, as altered by the Commission under this paragraph.

(2) The interim consumer product safety standard established in paragraph (1) shall provide that any cellulose insulation which is produced or distributed for sale or use as a consumer product shall have a flame spread rating of 0 to 25, as such rating is set forth in the General Services Administration's specification for cellulose insulation, HH–I–515C.

(3) During the period for which the interim consumer product safety standard established in subsection (a) of this section is in effect, in addition to complying with any labeling requirement established by the Commission under this chapter, each manufacturer or private labeler of cellulose insulation shall include the following statement on any container of such cellulose insulation: "ATTENTION: This material meets the applicable minimum Federal flammability standard. This standard is based upon laboratory tests only, which do not represent actual conditions which may occur in the home." Such statement shall be located in a conspicuous place on such container and shall appear in conspicuous and legible type in contrast by typography, layout, and color with other printed matter on such container.

(b) Scope of judicial review

Judicial review of the interim consumer product safety standard established in subsection (a) of this section, as such standard is in effect on and after the last day of the 60-day period specified in such subsection, shall be limited solely to the issue of whether any changes made by the Commission under paragraph (1) are technical, nonsubstantive changes. For purposes of such review, any change made by the Commission under paragraph (1) which requires that any test to determine the flame spread rating of cellulose insulation shall include a correction for variations in test results caused by equipment used in the test shall be considered a technical, nonsubstantive change.

(c) Enforcement; violations; promulgation of final standard; procedures applicable to promulgation; revision of interim standard; procedures applicable to revision

(1)(A) Any interim consumer product safety standard established pursuant to this section shall be enforced in the same manner as any other consumer product safety standard until such time as there is in effect a final consumer product safety standard promulgated by the Commission, as provided in subparagraph (B), or until such time as it is revoked by the Commission under section 2058(e) of this title. A violation of the interim consumer product safety standard shall be deemed to be a violation of a consumer product safety standard promulgated by the Commission under section 2058 of this title.

(B) If the Commission determines that the interim consumer product safety standard does not adequately protect the public from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation, it shall promulgate a final consumer product safety standard to protect against such risk. Such final standard shall be promulgated pursuant to section 553 of title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation. The provisions of section 2058 (b), (c), and (d) of this title shall apply to any proceeding to promulgate such final standard. In any judicial review of such final standard under section 2060 of this title, the court shall not require any demonstration that each particular finding made by the Commission under section 2058(c) of this title is supported by substantial evidence. The court shall affirm the action of the Commission unless the court determines that such action is not supported by substantial evidence on the record taken as a whole.

(2)(A) Until there is in effect such a final consumer product safety standard, the Commission shall incorporate into the interim consumer product safety standard, in accordance with the provisions of this paragraph, each revision superseding the requirements for flame resistance and corrosiveness referred to in subsection (a) of this section and promulgated by the General Services Administration.

(B) At least 45 days before any revision superseding such requirements is to become effective, the Administrator of the General Services Administration shall notify the Commission of such revision. In the case of any such revision which becomes effective during the period beginning on February 1, 1978, and ending on July 11, 1978, such notice from the Administrator of the General Services Administration shall be deemed to have been made on July 11, 1978.

(C)(i) No later than 45 days after receiving any notice under subparagraph (B), the Commission shall publish the revision, including such changes in the revision as it considers appropriate to make the revision suitable for promulgation as an amendment to the interim consumer product safety standard, in the Federal Register as a proposed amendment to the interim consumer product safety standard.

(ii) The Commission may extend the 45-day period specified in clause (i) for an additional period of not more than 150 days if the Commission determines that such extension is necessary to study the technical and scientific basis for the revision involved, or to study the safety and economic consequences of such revision.

(D)(i) Additional extensions of the 45-day period specified in subparagraph (C)(i) may be taken by the Commission if—

(I) the Commission makes the determination required in subparagraph (C)(ii) with respect to each such extension; and

(II) in the case of further extensions proposed by the Commission after an initial extension under this clause, such further extensions have not been disapproved under clause (iv).

(ii) Any extension made by the Commission under this subparagraph shall be for a period of not more than 45 days.

(iii) Prior notice of each extension made by the Commission under this subparagraph, together with a statement of the reasons for such extension and an estimate of the length of time required by the Commission to complete its action upon the revision involved, shall be published in the Federal Register and shall be submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives.

(iv) In any case in which the Commission takes an initial 45-day extension under clause (i), the Commission may not take any further extensions under clause (i) if each committee referred to in clause (iii) disapproves by committee resolution any such further extensions before the end of the 15-day period following notice of such initial extension made by the Commission in accordance with clause (iii).

(E) The Commission shall give interested persons an opportunity to comment upon any proposed amendment to the interim consumer product safety standard during the 30-day period following any publication by the Commission under subparagraph (C).

(F) No later than 90 days after the end of the period specified in subparagraph (E), the Commission shall promulgate the amendment to the interim consumer product safety standard unless the Commission determines, after consultation with the Secretary of Energy, that—

(i) such amendment is not necessary for the protection of consumers from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation; or

(ii) implementation of such amendment will create an undue burden upon persons who are subject to the interim consumer product safety standard.

(G) The provisions of section 2060 of this title shall not apply to any judicial review of any amendment to the interim product safety standard promulgated under this paragraph.

(d) Reporting requirements of other Federal departments, agencies, etc., of violations

Any Federal department, agency, or instrumentality, or any Federal independent regulatory agency, which obtains information which reasonably indicates that cellulose insulation is being manufactured or distributed in violation of this chapter shall immediately inform the Commission of such information.

(e) Reporting requirements of Commission to Congressional committees; contents, time of submission, etc.

(1) The Commission, no later than 45 days after July 11, 1978, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives which shall contain a detailed statement of the manner in which the Commission intends to carry out the enforcement of this section.

(2)(A) The Commission, no later than 6 months after the date upon which the report required in paragraph (1) is due (and no later than the end of each 6-month period thereafter), shall submit a report to each committee referred to in paragraph (1) which shall describe the enforcement activities of the Commission with respect to this section during the most recent 6-month period.

(B) The first report which the Commission submits under subparagraph (A) shall include the results of tests of cellulose insulation manufactured by at least 25 manufacturers which the Commission shall conduct to determine whether such cellulose insulation complies with the interim consumer product safety standard. The second such report shall include the results of such tests with respect to 50 manufacturers who were not included in testing conducted by the Commission for inclusion in the first report.

(f) Compliance with certification requirements; implementation; waiver; rules and regulations

(1) The Commission shall have the authority to require that any person required to comply with the certification requirements of section 2063 of this title with respect to the manufacture of cellulose insulation shall provide for the performance of any test or testing program required for such certification through the use of an independent third party qualified to perform such test or testing program. The Commission may impose such requirement whether or not the Commission has established a testing program for cellulose insulation under section 2063 (b) of this title.

(2) The Commission, upon petition by a manufacturer, may waive the requirements of paragraph (1) with respect to such manufacturer if the Commission determines that the use of an independent third party is not necessary in order for such manufacturer to comply with the certification requirements of section 2063 of this title.

(3) The Commission may prescribe such rules as it considers necessary to carry out the provisions of this subsection.

(g) Authorization of appropriations

There are authorized to be appropriated, for each of the fiscal years 1978, 1979, 1980, and 1981, such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 92-573, § 35, as added Pub. L. 95-319, § 3(a), July 11, 1978, 92 Stat. 386.)

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Section 2 of Pub. L. 95-319 provided that:

"(a) The Congress finds that—

"(1) existing Federal, State, and local laws and regulations are insufficient to protect the consumer from improperly manufactured cellulose insulation;

"(2) an unreasonably large quantity of cellulose insulation is being distributed that does not meet minimum safety standards;

"(3) an urgent need exists for the expedited setting of interim mandatory Federal standards for the manufacture of cellulose insulation; and

"(4) such standards are reasonably necessary to eliminate or reduce an unreasonable risk of injury to consumers from flammable or corrosive cellulose insulation.

"(b) It is the purpose of the Congress in this Act to [enacting this section, amending section 2068 of this title, and enacting provisions set out as notes under

sections 2051 and 2082 of this title] provide an interim mandatory safety standard for cellulose insulation manufactured for use as a consumer product."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2068 of this title.

CHAPTER 49—FIRE PREVENTION AND CONTROL

Sec.
2220. Arson prevention, detection, and control; report to Congress on manner of assistance to States and local jurisdictions [New].
2221. Acquisition, construction or rehabilitation of Academy site [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 16 section 2106.

§ 2201. Congressional findings

REORGANIZATION PLAN NO. 3 OF 1978

43 F.R. 41943, 92 Stat. 3790

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 19, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

PART I. FEDERAL EMERGENCY MANAGEMENT AGENCY

SECTION 101. ESTABLISHMENT OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY

There is hereby established as an independent establishment in the Executive Branch, the Federal Emergency Management Agency (the "Agency").

SECTION 102. THE DIRECTOR

The Agency shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for level II of the Executive Schedule [5 U.S.C. 5313].

SECTION 103. THE DEPUTY DIRECTOR

There shall be within the Agency a Deputy Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for level IV of the Executive Schedule [5 U.S.C. 5315]. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

SECTION 104. ASSOCIATED DIRECTORS

There shall be within the Agency not more than four Associate Directors, who shall be appointed by the President, by and with the advice and consent of the Senate, two of whom shall be compensated at the rate now or hereafter prescribed by law for level IV of the Executive Schedule [5 U.S.C. 5315], one of whom shall be compensated at the rate now or hereafter prescribed by law for level V of the Executive Schedule [5 U.S.C. 5316] and one of whom shall be compensated at the rate now or hereafter prescribed by law for GS-18 of the General Schedule [set out under 5 U.S.C. 5332]. The Associate Directors shall perform such functions as the Director may from time to time prescribe.

SECTION 105. REGIONAL DIRECTORS

There shall be within the Agency ten regional directors who shall be appointed by the Director in the excepted service and shall be compensated at the rate now or hereafter prescribed by law for GS-16 of the General Schedule [set out under 5 U.S.C. 5332].

SECTION 106. PERFORMANCE OF FUNCTIONS

The Director may establish bureaus, offices, divisions, and other units within the Agency. The Director may from time to time make provision for the performance of any function of the Director by any officer, employee, or unit of the Agency.

PART II. TRANSFER OF FUNCTIONS

SECTION 201. FIRE PREVENTION

There are hereby transferred to the Director all functions vested in the Secretary of Commerce, the Administrator and Deputy Administrator of the National Fire Prevention and Control Administration, and the Superintendent of the National Academy for Fire Prevention and Control pursuant to the Federal Fire Prevention and Control Act of 1974, as amended, (15 U.S.C. 2201 through 2219); exclusive of the functions set forth at Sections 18 and 23 of the Federal Fire Prevention and Control Act (15 U.S.C. 278(f) and 1511).

SECTION 202. FLOOD AND OTHER MATTERS

There are hereby transferred to the Director all functions vested in the Secretary of Housing and Urban Development pursuant to the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, (42 U.S.C. 2414 and 42 U.S.C. 4001 through 4128), and Section 1 of the National Insurance Development Act of 1975, as amended, (89 Stat. 68) [set out as a note under section 1749bbb of Title 12, Banks and Banking].

SECTION 203. EMERGENCY BROADCAST SYSTEM

There are hereby transferred to the Director all functions concerning the Emergency Broadcast System, which were transferred to the President and all such functions transferred to the Secretary of Commerce, by Reorganization Plan Number 1 [set out in the Appendix to Title 5, Government Organization and Employees].

PART III. GENERAL PROVISIONS

SECTION 301. TRANSFER AND ABOLISHMENT OF AGENCIES AND OFFICERS

The National Fire Prevention and Control Administration and the National Academy for Fire Prevention and Control and the positions of Administrator of said Administration and Superintendent of said Academy are hereby transferred to the Agency. The position of Deputy Administrator of said Administration (established by 15 U.S.C. 2204(c)) is hereby abolished.

SECTION 302. INCIDENTAL TRANSFERS

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SECTION 303. INTERIM OFFICERS

The President may authorize any persons who, immediately prior to the effective date of this Plan, held

positions in the Executive Branch to which they were appointed by and with the advice and consent of the Senate, to act as Director, Deputy Director, and Associate Directors of the Agency, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be. The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

SECTION 304. EFFECTIVE DATE

The provisions of this Reorganization Plan shall become effective at such time or times, on or before April 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

[Pursuant to Ex. Ord. 12127, Mar. 31, 1979, 44 F.R. 19367, this Reorg. Plan is effective Apr. 1, 1979]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

Today I am transmitting Reorganization Plan No. 3 of 1978. The plan improves Federal emergency management and assistance. By consolidating emergency prepredness, mitigation and response activities, it cuts duplicative administrative costs and strengthens our ability to deal effectively with emergencies.

The plan, together with changes I will make through Executive action, would merge five agencies from the Departments of Defense, Commerce, HUD, and GSA into one new agency.

For the first time, key emergency management and assistance functions would be unified and made directly accountable to the President and Congress. This will reduce pressures for increased costs to serve similar goals.

The present situation has severely hampered Federal support of State and local emergency organizations and resources, which bear the primary responsibility for preserving life and property in times of calamity. This reorganization has been developed in close cooperation with State and local governments.

If approved by the Congress, the plan will establish the Federal Emergency Management Agency, whose Director shall report directly to the President. The National Fire Prevention and Control Administration (in the Department of Commerce), the Federal Insurance Administration (in the Department of Housing and Urban Development), and oversight responsibility for the Federal Emergency Broadcast System (now assigned in the Executive Office of the President) would be transferred to the Agency. The Agency's Director, its Deputy Director, and its five principal program managers would be appointed by the President with the advice and consent of the Senate.

If the plan takes effect, I will assign to the Federal Emergency Management Agency all authorities and functions vested by law in the President and presently delegated to the Defense Civil Preparedness Agency (in the Department of Defense). This will include certain engineering and communications support functions for civil defense now assigned to the U.S. Army.

I will also transfer to the new Agency all authorities and functions under the Disaster Relief Acts of 1970 and 1974 [sections 4401 et seq. and 5121 et seq. of Title 42, The Public Health and Welfare] now delegated to the Federal Disaster Assistance Administration in the Department of Housing and Urban Development.

I will also transfer all Presidential authorities and functions now delegated to the Federal Preparedness Agency in the General Services Administration, including the establishment of policy for the national stockpile. The stockpile disposal function, which is statutorily assigned to the General Services Administration, would remain there. Once these steps have been taken by Executive Order, these three agencies would be abolished.

Several additional transfers of emergency preparedness and mitigation functions would complete the consolidation. These include:

Oversight of the Earthquake Hazards Reduction Program, under Public Law 95-124 [section 7701 et seq. of Title 42], now carried out by the Office of Science and Technology Policy in the Executive Office of the President.

Coordination of Federal activities to promote dam safety, carried by the same Office.

Responsibility for assistance to communities in the development of readiness plans for severe weather-related emergencies, including floods, hurricanes, and tornadoes.

Coordination of natural and nuclear disaster warning systems.

Coordination of preparedness and planning to reduce the consequences of major terrorist incidents. This would not alter the present responsibility of the executive branch for reacting to the incidents themselves.

This reorganization rests on several fundamental principles:

First, Federal authorities to anticipate, prepare for, and respond to major civil emergencies should be supervised by one official responsible to the President and given attention by other officials at the highest levels.

The new Agency would be in this position. To increase White House oversight and involvement still further, I shall establish by Executive Order an Emergency Management Committee, to be chaired by the Federal Emergency Management Agency Director. Its membership shall be comprised of the Assistants to the President for National Security, Domestic Affairs and Policy and Intergovernmental Relations, and the Director, Office of Management and Budget. It will advise the President on ways to meet national civil emergencies. It will also oversee and provide guidance on the management of all Federal emergency authorities, advising the President on alternative approaches to improve performance and avoid excessive costs.

Second, an effective civil defense system requires the most efficient use of all available emergency resources. At the same time, civil defense systems, organization, and resources must be prepared to cope with any disasters which threaten our people. The Congress has clearly recognized this principle in recent changes in the civil defense legislation.

The communications, warning, evacuation, and public education processes involved in preparedness for a possible nuclear attack should be developed, tested, and used for major natural and accidental disasters as well. Consolidation of civil defense functions in the new Agency will assure that attack readiness programs are effectively integrated into the preparedness organizations and programs of State and local government, private industry, and volunteer organizations.

While serving an important "all hazards" readiness and response role, civil defense must continue to be fully compatible with and be ready to play an important role in our Nation's overall strategic policy. Accordingly, to maintain a link between our strategic nuclear planning and our nuclear attack preparedness planning, I will make the Secretary of Defense and the National Security Council responsible for oversight of civil defense related programs and policies of the new Agency. This will also include appropriate Department of Defense support in areas like program development, technical support, research, communications, intelligence and emergency operations.

Third, whenever possible, emergency responsibilities should be extensions of the regular missions of Federal agencies. The primary task of the Federal Emergency Management Agency will be to coordinate and plan for the emergency deployment of resources that have other routine uses. There is no need to develop a separate set of Federal skills and capabilities for those rare occasions when catastrophe occurs.

Fourth, Federal hazard mitigation activities should be closely linked with emergency preparedness and response functions. This reorganization would permit

more rational decisions on the relative costs and benefits of alternative approaches to disasters by making the Federal Emergency Management Agency the focal point of all Federal hazard mitigation activities and by combining these with the key Federal preparedness and response functions.

The affected hazard mitigation activities include the Federal Insurance Administration which seeks to reduced flood losses by assisting states and local governments in developing appropriate land uses and building standards and several agencies that presently seek to reduce fire and earthquake losses through research and education.

Most State and local governments have consolidated emergency planning, preparedness and response functions on an "all hazard" basis to take advantage of the similarities in preparing for and responding to the full range of potential emergencies. The Federal Government can and should follow this lead.

Each of the changes set forth in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. The plan does not call for abolishing any functions now authorized by law. The provisions in the plan for the appointment and pay of any head or officer of the new agency have been found by me to be necessary.

I do not expect these actions to result in any significant changes in program expenditures for those authorities to be transferred. However, cost savings of between $10 to $15 million annually can be achieved by consolidating headquarters and regional facilities and staffs. The elimination (through attrition) of about 300 jobs is also anticipated.

The emergency planning and response authorities involved in this plan are vitally important to the security and well-being of our Nation. I urge the Congress to approve it.

JIMMY CARTER.

THE WHITE HOUSE, June 19, 1978

§ 2202. Declaration of purpose

It is declared to be the purpose of Congress in this chapter to—

[See main edition for text of (1) and (2)]

(3) establish the United States Fire Administration and the Fire Research Center within the Department of Commerce; and

[See main edition for text of (4)]

(As amended Pub. L. 95–422, § 2(a)(1), Oct. 5, 1978, 92 Stat. 932.)

AMENDMENTS

1978—Par. (3). Pub. L. 95–422 substituted "United States Fire Administration" for "National Fire Prevention and Control Administration".

TRANSFER OF FUNCTIONS

The National Fire Prevention and Control Administration [now United States Fire Administration] and the National Academy for Fire Prevention and Control and the positions of Administrator of the Administration and Superintendent of the Academy were transferred to an independent agency in the Executive Branch, to be known as the Federal Emergency Management Agency, and all functions vested in the Secretary of Commerce, the Administrator and Deputy Administrator of the National Fire Prevention and Control Administration, and the Superintendent of the National Academy for Fire Prevention and Control pursuant to the provisions of this chapter, with the exception of those functions under sections 2220 and 2221 of this title which remain vested in the Administrator of the United States Fire Administration, were transferred to the Director of the Federal Emergency Management Agency pursuant to Reorg. Plan No. 3 of 1978, §§ 201, 301, June 19, 1978, 43 F.R. 41944, 92 Stat. 3790, set out as a note under section 2201 of this title, effective Apr. 1, 1979, pursuant to Ex. Ord. No. 12127, §§ 1–101, 1–103(a), Mar. 31, 1979, 44 F.R. 19367.

§ 2203. Definitions

As used in this chapter, the term—

[See main edition for text of (1)]

(2) "Administration" means the United States Fire Administration established pursuant to section 2204 of this title;

(3) "Administrator" means the Administrator of the United States Fire Administration;

[See main edition for text of (4) to (7)]

(As amended Pub. L. 95–422, § 2(a)(1), Oct. 5, 1978, 92 Stat. 932.)

AMENDMENTS

1978—Pars. (2), (3). Pub. L. 95–422 substituted "United States Fire Administration" for "National Fire Prevention and Control Administration".

TRANSFER OF FUNCTIONS

Functions of the National Fire Prevention and Control Administration [now United States Fire Administration] and the National Academy for Fire Prevention and Control were generally transferred to the Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§ 2204. United States Fire Administration

(a) Establishment

There is hereby established in the Department of Commerce an agency which shall be known as the United States Fire Administration.

(b) Administrator

There shall be at the head of the Administration the Administrator of the United States Fire Administration. The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule pay rates (5 U.S.C. 5315). The Administrator shall report and be responsible to the Secretary.

(c) Deputy Administrator

There shall be in the Administration a Deputy Administrator of the United States Fire Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule pay rates (5 U.S.C. 5316). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(As amended Pub. L. 95–422, § 2(a)(1), Oct. 5, 1978, 92 Stat. 932.)

AMENDMENTS

1978—Subsecs. (a) to (c). Pub. L. 95-422 substituted "United States Fire Administration" for "National Fire Prevention and Control Administration".

TRANSFER OF FUNCTIONS

Functions of the National Fire Prevention and Control Administration [now United States Fire Administration] and the National Academy for Fire Prevention and Control were generally transferred to the Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

POSITION OF DEPUTY ADMINISTRATOR ABOLISHED

The position of Deputy Administrator of the National Fire Prevention and Control Administration was abolished by section 301 of Reorganization Plan No. 3 of 1978, § 301, 43 F.R. 41944, 92 Stat. 3790, set out as a note under section 2201 of this title.

§§ 2205 to 2215.

TRANSFER OF FUNCTIONS

Functions of the National Fire Prevention and Control Administration [now United States Fire Administration] and the National Academy for Fire Prevention and Control were generally transferred to the Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§ 2216. Authorization of appropriations

There are authorized to be appropriated to carry out the foregoing provisions of this chapter, except as otherwise specifically provided, with respect to the payment of claims, under section 2210 of this title, not to exceed $3,750,000 for the transitional fiscal quarter of July 1, 1976, through September 30, 1976, not to exceed $15,000,000 for the fiscal year ending September 30, 1977, not to exceed $20,000,000 for the fiscal year ending September 30, 1978, and not to exceed $24,352,000 for the fiscal year ending September 30, 1979.

(As amended Pub. L. 95-422, § 1(a), Oct. 5, 1978, 92 Stat. 932.)

AMENDMENTS

1978—Pub. L. 95-422 substituted "except as otherwise specifically provided, with respect to the payment of claims, under section 2210 of this title" for "except section 2210 of this title", struck out "and" following "September 30, 1977", and added provision authorizing the appropriation of not to exceed $24,352,000 for the fiscal year ending Sept. 30, 1979.

TRANSFER OF FUNCTIONS

Functions of the National Fire Prevention and Control Administration [now United States Fire Administration] and the National Academy for Fire Prevention and Control were generally transferred to the Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2206, 2220 of this title.

§§ 2217 to 2219.

TRANSFER OF FUNCTIONS

Functions of the National Fire Prevention and Control Administration [now United States Fire Administration] and the National Academy for Fire Prevention and Control were generally transferred to the Federal Emergency Management Agency. For further details see Transfer of Functions note set out under section 2202 of this title.

§ 2220. Arson prevention, detection, and control; report to Congress on manner of assistance to States and local jurisdictions

(a) The Administrator shall—

(1) develop arson detection techniques to assist Federal agencies and States and local jurisdictions in improving arson prevention, detection, and control;

(2) provide training and instructional materials in the skills and knowledge necessary to assist Federal, State, and local fire service and law enforcement personnel in arson prevention, detection, and control;

(3) formulate methods for collection of arson data which would be compatible with methods of collection used for the uniform crime statistics of the Federal Bureau of Investigation;

(4) develop and implement programs for improved collection of nationwide arson statistics within the National Fire Incident Reporting System at the National Fire Data Center;

(5) develop programs for public education on the extent, causes, and prevention of arson; and

(6) develop handbooks to assist Federal, State, and local fire service and law enforcement personnel in arson prevention and detection.

(b)(1) The Administrator shall prepare and submit to Congress, not later than March 15, 1979, a report on ways in which the Federal Government may better assist the States and local jurisdictions in providing for more effective arson prevention, detection, and control. Such report shall include, but need not be limited to—

(A)(i) an assessment of State and local capabilities in regard to arson investigation and detection; and

(ii) an evaluation of the necessity for and the desirability of Federal supplementation of such State and local capabilities or other Federal assistance in arson detection;

(B) a summary of Federal programs which seek to reduce arson;

(C) an identification and analysis of existing Federal and State laws which may contribute to the incidence of arson;

(D) recommendations for additional legislation or other programs, including research programs, or policies which may be required to assist in reducing arson in the United States; and

(E) an assessment, where practical, of the costs and benefits of those programs and activities cited in paragraphs (1) through (4) of subsection (a) of this section or recommended by the Administration.

(2) Of the funds authorized to be appropriated in section 2216 of this title, $100,000 shall be available in fiscal year 1979 for carrying out the purposes of paragraph (1) of this subsection.

(Pub. L. 93-498, § 24, as added Pub. L. 95-422, § 3(a), Oct. 5, 1978, 92 Stat. 932.)

TRANSFER OF FUNCTIONS

Functions of the Administrator of the United States Fire Administration under this section and section 2221 of this title to remain vested in the Administrator and not to be transferred to the Director of the Federal Emergency Management Agency, pursuant to Reorg. Plan No. 3 of 1978, §§ 201, 301, June 19, 1978, 43 F.R. 41944, 92 Stat. 3790, set out as a note under section 2201 of this title, effective Apr. 1, 1979, pursuant to Ex. Ord. No. 12127, § 1-103(a), Mar. 31, 1979, 44 F.R. 19367.

§ 2221. Acquisition, construction or rehabilitation of Academy site

(a) The Administrator is authorized to sell the former Marjorie Webster Junior College facility, located in Washington, D.C., which was previously purchased as the site for the Academy. In the event of the sale of such facility, the Administrator shall establish within the Administration an Academy Acquisition and Construction Account (hereinafter referred to as the "Account"), and shall deposit into such Account only the proceeds from the sale of such facility. Following such deposit, the Administrator shall calculate the sum of both the funds deposited into the Account, and the total monies which have been or may be appropriated for the acquisition, construction, and/or rehabilitation of a site for the Academy. If the Administrator finds that the total amount so calculated would exceed $9,000,000, the Administrator shall deduct from the Account the difference between this combined total and $9,000,000, and shall deposit such difference into the Treasury as miscellaneous receipts.

(b) The Administrator is thereafter authorized and directed to retain and apply funds in the Account for the acquisition, construction, and/or rehabilitation of any site which may be selected, together with such other monies as have been or may be appropriated for such purposes, except that the total authorized expenditure for such monies shall not exceed $9,000,000. Such sums shall remain available until expended.

(Pub. L. 93-498, § 25, as added Pub. L. 95-422, § 4, Oct. 5, 1978, 92 Stat. 933.)

TRANSFER OF FUNCTIONS

Functions of the Administrator of the United States Fire Administration under this section and section 2220 of this title to remain vested in the Administrator and not to be transferred to the Director of the Federal Emergency Management Agency, pursuant to Reorg. Plan No. 3 of 1978, §§ 201, 301, June 19, 1978, 43 F.R. 41944, 92 Stat. 3790 set out as a note under section 2201 of this title, effective Apr. 1, 1979, pursuant to Ex. Ord. No. 12127, § 1-103(a), Mar. 31, 1979, 44 F.R. 19367.

CHAPTER 51—NATIONAL PRODUCTIVITY AND QUALITY OF WORKING LIFE

SUBCHAPTER I—FINDINGS, PURPOSE AND POLICY; DEFINITIONS

§ 2401. Congressional findings

EX. ORD. NO. 12089. NATIONAL PRODUCTIVITY COUNCIL

Ex. Ord. No. 12089, Oct. 23, 1978, 43 F.R. 49773, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for coordinated and effective Federal programs to improve productivity in the public and private sectors, it is hereby ordered as follows:

1-1. ESTABLISHMENT OF THE COUNCIL

1-101. There is established the National Productivity Council.

1-102. The Council will be composed of the heads of the following agencies, or a designated representative, and such others as the President may designate:

(a) Department of the Treasury.
(b) Department of Commerce.
(c) Department of Labor.
(d) Office of the Special Representative for Trade Negotiations.
(e) Council of Economic Advisers.
(f) Office of Management and Budget.
(g) Office of Science and Technology Policy.
(h) Council on Environmental Quality.
(i) Office of Personnel Management, and
(j) Council on Wage and Price Stability.

1-103. The Director of the Office of Management and Budget will serve as Chairman of the Council.

1-2. FUNCTIONS OF THE COUNCIL

1-201. The Council will work with Executive agencies to assure that activities designed to improve productivity in the private and public sectors are carried out in a manner that realizes maximum benefit from the resources invested. As part of this responsibility the Council will identify opportunities for cooperative or innovative projects to be undertaken by the agencies, as well as overlapping or duplicative programs which should be eliminated.

1-202. The Council will identify issues pertaining to private and public sector productivity and productivity improvement, and will make assignments to Council members or other Executive agencies for studying and resolving the issues.

1-203. The Council will identify major policy issues with productivity implications for consideration by the President, including the need for legislative initiatives.

1-204. The Council will serve as the focal point within the Executive Branch for liaison with elements of the private sector concerned with improving productivity, and will seek the advice and assistance of business, labor, and academic leaders, as well as representatives from State and local governments and others concerned with productivity.

1-205. The Council will serve as the focal point within the Executive Branch for liaison with organizations of foreign governments involved in efforts to improve productivity.

1-3. ADMINISTRATIVE PROVISIONS

1-301. Executive agencies shall cooperate with and assist the Council in performing its functions.

1-302. The Chairman shall be responsible for providing the Council with such administrative services and support as may be necessary or appropriate.

1-303. The Chairman may establish working groups or subcommittees of the Council. The Chairman may invite representatives of nonmember agencies to par-

ticipate from time to time in the functions of the Council.

1-304. The Chairman shall report to the President on the performance of the Council's functions.

JIMMY CARTER.

SUBCHAPTER II—NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE

§ 2414. Functions of the Center

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

CHAPTER 52—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 7153a.

§ 2502. Definitions

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 2503. Duties of the Administrator

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2502, 2504, 2507 of this title; title 42 section 2473.

§ 2504. Coordination between the Administrator and other agencies

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2507 of this title; title 42 section 2473.

§ 2505. Research and development

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2506 of this title; title 42 section 2473.

§ 2506. Demonstrations

[See main edition for text of (a)]

(b) Performance standards; factors considered; vehicle uses; revision; transmission of standards to Congress

[See main edition for text of (1) and (2)]

(3) Such performance standards shall be revised, by rule, periodically as the state-of-the-art improves.

(4) The Administrator shall transmit to the Speaker of the House of Representatives and the President of the Senate, and to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, the performance standards developed under paragraph (1) and all revised performance standards established in connection with the demonstrations specified in subsection (c)(2) of this section.

(c) Contracts for vehicle purchase or lease; delivery requirements; demonstration criteria and duration; availability of information for leasing and procurements; transmittal of explanations to Congress concerning demonstration project purchases or leases

(1) The Administrator shall, within 6 months after the date of promulgation of performance standards pursuant to subsection (b)(1) of this section, institute the first contracts for the purchase or lease of electric or hybrid vehicles which satisfy the performance standards set forth under subsection (b)(1) of this section. The delivery of such vehicles shall be completed according to the expedited best effort of the administering agency and the selected manufacturer. To the extent practicable, vehicles purchased or leased under such contracts shall represent a cross-section of the available technologies and of actual or potential vehicle use.

(2) Thereafter, according to a planned schedule, the Administrator shall contract for the purchase or lease of additional electric or hybrid vehicles which satisfy amended performance standards and represent continuing improvements in state-of-the-art. In conducting demonstrations, the Administrator shall consider—

(A) the need and intent of the Congress to stimulate and encourage private sector production as well as public knowledge, acceptance, and use of electric and hybrid vehicles; and

(B) demonstration of varying degrees of vehicle operations, management, and control for maximum widespread effectiveness and exposure to public use.

(3) The demonstration period shall extend through the fiscal year 1986, with purchase or leasing continuing through the fiscal year 1984. During the demonstration period the Administrator shall demonstrate 7,500 to 10,000 electric and hybrid vehicles. No more than 400 vehicles may be procured for this purpose during fiscal

year 1978. In order to allow industry time for advanced planning, the size and nature of projected electric and hybrid vehicle leasing and procurements will be made public by the administering agency. Publications under the preceding sentence (each covering a period of two years) shall be released annually starting at an appropriate time in the fiscal year 1978.

(4) If the Administrator determines on the basis of his annual review of the program under this chapter that—

(A) at least 200 vehicles cannot be added to the project during the fiscal year 1978, or

(B) at least 600 vehicles cannot be added to the project during the fiscal year 1979, or

(C) at least 1,700 vehicles cannot be added to the project during the fiscal year 1980, or

(D) at least 7,500 vehicles in the aggregate cannot be added to the project during the fiscal years 1981 through 1984,

he shall immediately forward a detailed explanation thereof to the Speaker of the House of Representatives, the President of the Senate, the Committee on Science and Technology of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate.

[See main edition for text of (d) and (e)]

(As amended Pub. L. 95-238, title VI, § 601, Feb. 25, 1978, 92 Stat. 91.)

AMENDMENTS

1978—Subsec. (b)(3). Pub. L. 95-238, § 601(a), struck out requirement that rules promulgated under par. (1) be amended not later than 6 months prior to the date for contracts specified in subsec. (c)(2) of this section.

Subsec. (b)(4). Pub. L. 95-238, § 601(b), substituted provisions relating to transmission of standards developed under par. (1) and all revised standards established in connection with the demonstrations specified in subsec. (c)(2) of this section, for provisions relating to transmission of standards developed under par. (1) as revised and currently in effect prior to contracts for the production of vehicles under subsec. (c)(2) of this section.

Subsec. (c). Pub. L. 95-238, § 601(c), in par. (1) substituted provisions relating to the first contracts for purchase or lease of vehicles and delivery of such vehicles, for provisions relating to contracts for the purchase or lease of 2,500 vehicles and delivery of such vehicles within 39 months after Sept. 17, 1976, in par. (2) substituted provisions relating to contracts for the purchase or lease of additional vehicles which satisfy amended performance standards and are improvements in the state-of-the-art and criteria for demonstrations, for provisions relating to contracts for the purchase or lease of 5,000 advanced vehicles and delivery of such vehicles within 72 months after Sept. 17, 1976, with an extention of the delivery period for 6 additional months, and added pars. (3) and (4).

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2507, 2510, 2512, 2513 of this title; title 42 section 2473.

§ 2507. Contracts

[See main edition for text of (a) to (c)]

(d) Purchase or lease of demonstration vehicles pursuant to agreements and utilization of Federal forms of assistance and participation authorized under other statutory provisions

In addition to contracting for the purchase or lease of vehicles when conducting the demonstrations established under section 2506 of this title, the Administrator may acquire or secure use of such vehicles, or have such vehicles acquired or used by others, by making agreements and utilizing various forms of Federal assistance and participation which is authorized under the Energy Reorganization Act of 1974 (Public Law 93-438) [42 U.S.C. 5801 et seq.] and the Federal Nonnuclear Energy Research and Development Act of 1974 (Public Law 93-577) [42 U.S.C. 5901 et seq.].

(e) Cost-sharing and use of American materials for demonstrations

When contracting and otherwise using Federal funds to conduct demonstrations under this chapter, the Administrator shall seek cost-sharing with others to the maximum extent practical. During the first 2 years of demonstration activities the Administrator may enter into procurement or lease contracts for purposes of carrying out demonstrations under this chapter without regard to the provisions of sections 10a to 10c of title 41.

(As amended Pub. L. 95-238, title VI, § 602, Feb. 25, 1978, 92 Stat. 92.)

REFERENCES IN TEXT

The Energy Reorganization Act of 1974 (Public Law 93-438), referred to in subsec. (d), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of Title 42 and Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974 (Public Law 93-577), referred to in subsec. (d), is Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of Title 42 and Tables.

AMENDMENTS

1978—Subsecs. (d), (e). Pub. L. 95-238 added subsecs. (d) and (e).

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration and the Federal Energy Administration were terminated and functions vested by law in the respective Administrators thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2511 of this title; title 42 section 2473.

§ 2508. Encouragement and protection of small business

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 2473.

§ 2509. Loan guarantees

[See main edition for text of (a) to (d)]

(e) Maximum guarantee per loan; maximum of aggregate guarantees; Electric and Hybrid Vehicle Development Fund; establishment, funding, etc.

[See main edition for text of (1) and (2)]

(3)(A) There is established in the Treasury of the United States an Electric and Hybrid Vehicle Development Fund (hereinafter in this paragraph referred to as the "fund"), which shall be available to the Administrator for carrying out the loan guarantee and principal and interest assistance program authorized by this chapter, including the payment of administrative expenses incurred in connection therewith. Moneys in the fund not needed for current operations may, with the approval of the Secretary of the Treasury, be invested in bonds or other obligations of, or guaranteed by, the United States.

(B) There shall be paid into the fund such part of the amounts appropriated pursuant to section 2514 of this title as the Administrator deems necessary to carry out the purposes of this chapter and such amounts as may be returned to the United States pursuant to subsection (g) of this section, and the amounts in the fund shall remain available until expended, except that after the expiration of the 7-year period established by subsection (h) of this section such amounts in the fund as are not required to secure outstanding guarantee obligations shall be paid into the general fund of the Treasury.

(C) If at any time the moneys available in the fund are insufficient to enable the Administrator to discharge his responsibilities under this section, he shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. This borrowing authority shall be effective only to such extent or in such amounts as are specified in appropriation Acts. Such authority shall be without fiscal year limitation. Redemption of such notes or obligations shall be made by the Administrator from appropriations or other moneys available under this chapter. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall not be less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(D) Business-type financial reports covering the operations of the fund shall be submitted to the Congress by the Administrator annually upon the completion of the appropriate accounting period.

[See main edition for text of (f)]

(g) Payment of principal and interest; default; recovery of losses

(1) With respect to any loan guaranteed pursuant to this section, the Administrator is authorized to enter into a contract to pay, and to pay, the lender for and on behalf of the borrower the principal and interest charges which become due and payable on the unpaid balance of such loan if the Administrator finds—

(A) that the borrower is unable to meet principal and interest charges, that it is in the public interest to permit the borrower to continue to pursue the purposes of the project, and that the probable net cost to the Federal Government in paying such principal will be less than that which would result in the event of a default; and

(B) that the amount of such principal and interest charges which the Administrator is authorized to pay shall be no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement.

(2) In the event of any default by a qualified borrower on a guaranteed loan, the Administrator is authorized to make payment in accordance with the guarantee, and the Attorney General shall take such action as may be appropriate to recover the amounts of such payments (including any payment of principal and interest under paragraph (1)) from such assets of the defaulting borrower as are associated with the activity with respect to which the loan was made or from any other surety included in the terms of the guarantee.

(h) Seven year limitation

No loan guarantee shall be made, or interest assistance contracts entered into, pursuant to this section, after the expiration of the 7-year period following September 17, 1976.

[*See main edition for text of* (i)]

(j) Pledge of full faith and credit of United States

The full faith and credit of the United States is pledged to the payment of all obligations incurred under this section.

(As amended Pub. L. 95-238, title VI, § 603, Feb. 25, 1978, 92 Stat. 93.)

REFERENCES IN TEXT

The Second Liberty Bond Act, as amended, and that Act, referred to in subsec. (e)(3)(C), is act Sept. 24, 1917, ch. 56, 40 Stat. 288. For complete classification of this Act to the Code, see References in Text note set out under section 774 of Title 31, Money and Finance, and Tables.

AMENDMENTS

1978—Subsec. (e)(3). Pub. L. 95-238, § 603(a)(1), added subsec. (e)(3).

Subsec. (g). Pub. L. 95-238, § 603(b), added provisions relating to payment of principal by the Administrator.

Subsec. (h). Pub. L. 95-238, § 603(c), substituted "7" for "5".

Subsec. (j). Pub. L. 95-238, § 603(a)(2), added subsec. (j).

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 2473.

§§ 2510 to 2513.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

§ 2514. Authorization for appropriations

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2509 of this title.

CHAPTER 53—TOXIC SUBSTANCES CONTROL

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 4365, 7458.

§ 2601. Findings, policy, and intent

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

§ 2608. Relationship to other Federal laws

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 7458.

§ 2617. Preemption

(a) Effect on State law

[*See main edition for text of* (1)]

(2) Except as provided in subsection (b) of this section—

[*See main edition for text of* (A)]

(B) if the Administrator prescribes a rule or order under section 2604 or 2605 of this title (other than a rule imposing a requirement described in subsection (a)(6) of section 2605 of this title) which is applicable to a chemical substance or mixture, and which is designed to protect against a risk of injury to health or the environment associated with such substance or mixture, no State or political subdivision of a State may, after the effective date of such requirement, establish or continue in effect, any requirement which is applicable to such substance or mixture, or an article containing such substance or mixture, and which is designed to protect against such risk unless such requirement (i) is identical to the requirement prescribed by the Administrator, (ii) is adopted under the authority of the Clean Air Act [42 U.S.C. 7401 et seq.] or any other Federal law, or (iii) prohibits the use of such substance or mixture in such State or political subdivision (other than its use in the manufacture or processing of other substances or mixtures).

[*See main edition for text of* (b)]

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(2)(B), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see short Title note set out under section 7401 of Title 42 and Tables.

CODIFICATION

Subsec. (a)(2)(B) is set out in this supplement to reflect the current citation for the Clean Air Act, which was reclassified to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare, on enactment of Pub. L. 95-95.

CHAPTER 54—AUTOMATIVE PROPULSION RESEARCH AND DEVELOPMENT [NEW]

Sec.
2701. Congressional findings and purpose.
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2703. Advanced systems program implementation by Secretary of Energy.
(a) Establishment and conduct of program.
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(c) Federal laboratories; priority for financial assistance; functions.
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(e) Intensification of research in basic areas by Department of Energy.
(f) Program provisions and requirements; administrative and judicial procedures applicable to contracts, grants, or projects; additional information for reports and budget submissions; nonretroactivity of provisions and requirements.
2704. Evaluation and report to Congress by Secretary of Transportation on utilization of advanced technology by automobile industry.
2705. Coordinating and consulting requirements and authorities of Secretary of Energy.
(a) Conduct of overall management responsibilities.
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(c) Requests for assistance of Federal departments, etc.
(d) Consultations with Administrator of Environmental Protection Agency and Secretary of Transportation; establishment of procedures for periodic consultation with interested groups; establishment and functions of advisory panels.
(e) Responsibilities under other Federal automotive research, development, and demonstration provisions unaffected.
2706. Informational and testing functions of Secretary of Energy.
(a) Evaluations of new or improved technologies pursuant to written submissions.
(b) Testing by Administrator of Environmental Protection Agency of systems developed under research and development program or submitted by Secretary; scope and purposes of tests; submission of test data and results to Secretary.
(c) Collection, analysis, and dissemination of information, data, and materials to developers.
2707. Patents and inventions; statutory provisions applicable; contracts or grants covered.
2708. Comptroller General audit and examination of books, etc.; statutory provisions applicable; contracts or grants covered.
2709. Reports to Congress by Secretary of Energy on comprehensive program, etc.; survey, study, and report to Congress by Secretary of Energy on financial obligation guarantees.
2710. Authorization of appropriations.

§ 2701. Congressional findings and purpose

(a) The Congress finds that—

(1) existing automobile propulsion systems, on the average, fall short of meeting the long-term goals of the Nation with respect to environmental protection, and energy conservation;

(2) advanced alternatives to existing automobile propulsion systems could, with sufficient research and development effort, meet these long-term goals, and have the potential to be mass produced at reasonable cost; and advanced automobile propulsion systems could operate with significantly less adverse environmental impact and fuel consumption than existing automobiles, while meeting all of the other requirements of Federal law;

(3) insufficient resources are being devoted to both research on and development of advanced automobile propulsion system technology;

(4) an expanded research and development effort with respect to advance automobile propulsion system technology would complement and stimulate corresponding efforts by the private sector and would encourage automobile manufacturers to consider seriously the incorporation of such advanced technology into automobiles and automobile components; and

(5) the Nation's energy and environmental problems are urgent, and therefore advanced automobile propulsion system technology should be developed, tested, demonstrated, and prepared for manufacture within the shortest practicable time.

(b) It is therefore the purpose of the Congress, in this chapter to—

(1)(A) direct the Department of Energy to make contracts and grants for research and development leading to the development of advanced automobile propulsion systems within 5 years of February 25, 1978, or within the shortest practicable time consistent with appropriate research and development techniques, and (B) evaluate and disseminate information with respect to advanced automobile propulsion system technology;

(2) preserve, enhance, and facilitate competition in research, development, and production with respect to existing and alternative automobile propulsion systems; and

(3) supplement, but neither supplant nor duplicate, the automotive propulsion system research and development efforts of private industry.

(Pub. L. 95-238, title III, § 302, Feb. 25, 1978, 92 Stat. 78.)

Short Title

Section 301 of Pub. L. 95-238 provided that: "This title [enacting this chapter and amending section 2451 of Title 42, The Public Health and Welfare] may be cited as the 'Automotive Propulsion Research and Development Act of 1978'."

Section Referred to in Other Sections

This section is referred to in title 42 section 2451.

§ 2702. Definitions

As used in this chapter, the term—

(1) "advanced automobile propulsion system" means an energy conversion system, including engine and drive train, which utilizes advanced technology and is suitable for use in an advanced automobile;

(2) "developer" means any person engaged in whole or in part in research or other efforts directed toward the development of advanced automobile technology;

(3) "fuel" means any energy source capable of propelling an automobile;

(4) "fuel economy" refers to the average distance traveled in representative driving

conditions by an automobile per unit of fuel consumed, as determined by the Administrator of the Environmental Protection Agency in accordance with test procedures which shall be established by rule and shall require that fuel economy tests be conducted in conjunction with the exhaust emissions tests mandated by section 7525 of title 42;

(5) "intermodal adaptability" refers to any characteristics of an automobile which enable it to be operated or carried, or which facilitate its operation or carriage, by or on an alternative mode or other system of transportation;

(6) "reliability" refers to (A) the average time and distance over which normal automobile operation can be expected without significant repair or replacement of parts, and (B) the ease of diagnosis and repair of an automobile, its systems, and parts in the event of failure during use or damage from an accident;

(7) "safety" refers to the performance of an automobile propulsion system or equipment in such a manner that the public is protected against unreasonable risk of accident and against unreasonable risk of death or bodily injury in case of accident;

(8) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

(Pub. L. 95-238, title III, § 303, Feb. 25, 1978, 92 Stat. 79.)

REFERENCES IN TEXT

Section 7525 of title 42, referred to in par. (4), in the original read "section 206 of the Clean Air Act (42 U.S.C. 1857f-5)", meaning act July 14, 1955, ch. 360, § 206, as added Dec. 31, 1970, Pub. L. 91-604, § 8(a), 84 Stat. 1694, which was formerly classified to section 1857f-5 of Title 42, The Public Health and Welfare, and which is now classified to section 7525 of Title 42 pursuant to the general revision of the Clean Air Act by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685.

§ 2703. Advanced systems program implementation by Secretary of Energy

(a) Establishment and conduct of program

The Secretary of Energy shall establish, within the Department of Energy, a program to insure the development of advanced automobile propulsion systems within 5 years after February 25, 1978, or within the shortest practicable time, consistent with appropriate research and development technique. In conducting such program, the Secretary of Energy shall—

(1) establish and conduct new projects and accelerate existing projects which may contribute to the development of advanced automobile propulsion systems;

(2) give priority attention to the development of advanced propulsion systems with appropriate attention to those advanced propulsion systems which are flexible in the type of fuel used; and

(3) insure that research and development under this chapter supplements, but neither supplants nor duplicates, the automotive research and development efforts of private industry.

(b) Contracts and grants with Federal agencies, laboratories, etc.

The Secretary of Energy shall, in fulfilling his responsibilities under this chapter, make contracts and grants with any Federal agency, laboratory, university, nonprofit organization, industrial organization, public or private agency, institution, organization, corporation, partnership, or individual for research and development leading to advanced automobile propulsion systems which are likely to help meet the Nation's long-term goals with respect to fuel economy, environmental protection, and other objectives.

(c) Federal laboratories; priority for financial assistance; functions

In providing financial assistance under this chapter, the Secretary of Energy shall give full consideration to the capabilities of Federal laboratories, except that not more than 60 per centum of the funds appropriated pursuant to the authorization under section 2710 of this title shall be directly expended in Federal laboratories. In accordance with section 2706 of this title, such laboratories shall be available for testing components and subsystems which, in the Secretary of Energy's judgment, is likely to contribute to the development of advanced automobile propulsion systems.

(d) Evaluations, testing, information dissemination, and reporting functions

The Secretary of Energy shall conduct evaluations, arrange for tests, and disseminate information pursuant to section 2706 of this title and submit reports required under section 2709 of this title.

(e) Intensification of research in basic areas by Department of Energy

The Department of Energy shall intensify research in key basic science areas in which the lack of knowledge limits development of advanced automobile propulsion systems.

(f) Program provisions and requirements; administrative and judicial procedures applicable to contracts, grants, or projects; additional information for reports and budget submissions; nonretroactivity of provisions and requirements

(1) The Secretary of Energy shall insure that the conduct of the program as defined in subsection (a) of this section—

(A) supplements the automotive propulsion system research and development efforts of industry;

(B) is not formulated in a manner that will supplant private industry research and development or displace or lessen industry's research and development; and

(C) avoids duplication of private research and development.

(2) To that end, the Secretary of Energy shall issue administrative regulations, within 60 days after February 25, 1978, which shall specify procedures, standards, and criteria for the timely review for compliance of each new contract, grant, Department of Energy project, or other agency project funded or to be funded under the authority of this Act. Such regulations shall require that the Secretary of Energy or his designee shall certify that each such con-

tract, grant, or project satisfies the requirement of this subsection, and shall include in such certification a discussion of the relationship of any related or comparable industry research and development, in terms of this subsection, to the proposed research and development under the authority of this Act. The discussion shall also address related issues, such as cost sharing and patent rights.

(3) Such ceritfications shall be available to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The provisions of chapter 5 of title 5, shall not apply to such certifications and no court shall have any jurisdiction to review the preparation or adequacy of such certifications; but section 553 of title 5 and section 5916 of title 42, shall apply to public disclosure of such certifications.

(4) The Secretary of Energy also shall include in the report required by section 2709(a) of this title a detailed discussion of how each research and development contract, grant, or project funded under the authority of this Act satisfies the requirement of this subsection.

(5) Further, the Secretary of Energy in each annual budget submission to the Congress, or amendment thereto, for the programs authorized by this Act shall describe how each identified research and development effort in such submission satisfies the requirements of this subsection.

(6) The provisions and requirements of this subsection shall not apply with respect to any contract, grant, or project which was entered into, made, or formally approved and initiated prior to February 25, 1978, or with respect to any renewal or extension thereof.

(Pub. L. 95-238, title III, § 304, Feb. 25, 1978, 92 Stat. 79.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f), is Pub. L. 95-238, Feb. 25, 1978, 92 Stat. 47, known as the Department of Energy Act of 1978—Civilian Applications. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2705 of this title.

§ 2704. Evaluation and report to Congress by Secretary of Transportation on utilization of advanced technology by automobile industry

The Secretary of Transportation, in furtherance of the purposes of this chapter, shall evaluate the extent to which the automobile industry utilizes advanced automotive technology which is or could be made available to it. The Secretary of Transportation shall submit a report to the Congress each year on the results of such evaluation including any appropriate recommendations which may encourage the utilization of advanced automobile technology by the automobile industry.

(Pub. L. 95-238, title III, § 305, Feb. 25, 1978, 92 Stat. 81.)

§ 2705. Coordinating and consulting requirements and authorities of Secretary of Energy

(a) Conduct of overall management responsibilities

The Secretary of Energy shall have overall management responsibility for carrying out the program under section 2703 of this title. In carrying out such program, the Secretary of Energy, consistent with such overall management responsibility—

(1) shall utilize the expertise of the Department of Transportation to the extent deemed appropriate by the Secretary of Energy; and

(2) may utilize any other Federal agency (except as provided in paragraph (1)) in accordance with subsection (c) of this section in carrying out any activities under this chapter, to the extent that the Secretary of Energy determines that any such agency has capabilities which would allow such agency to contribute to the purposes of this chapter.

(b) Exercise of powers by Secretary of Transportation

The Secretary of Transportation, whenever the expertise of the Department of Transportation is utilized in accordance with subsection (a) of this section, may exercise the powers granted to the Secretary of Energy under subsection (c) of this section and shall enter into contracts and make grants for such purpose, subject to the overall management responsibility of the Secretary of Energy.

(c) Requests for assistance of Federal departments, etc.

The Secretary of Energy may, in accordance with subsection (a) of this section, obtain the assistance of any department, agency, or instrumentality of the executive branch of the Federal Government upon written request, on a reimbursable basis or otherwise and with the consent of such department, agency, or instrumentality. Each such request shall identify the assistance the Secretary of Energy deems necessary to carry out any duty under this chapter.

(d) Consultations with Administrator of Environmental Protection Agency and Secretary of Transportation; establishment of procedures for periodic consultation with interested groups; establishment and functions of advisory panels

The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Transportation, and shall establish procedures for periodic consultation with representatives of science, industry, and such other groups as may have special expertise in the area of automobile propulsion system research, development, and technology. The Secretary of Energy may establish such advisory panels as he deems appropriate to review and make recommendations with respect to applications for funding under this chapter.

(e) Responsibilities under other Federal automotive research, development, and demonstration provisions unaffected

Nothing contained in this chapter shall be construed to reduce in any way the responsibilities of the Secretary of Energy for automotive research, development, and demonstration under the Energy Reorganization Act of 1974

(42 U.S.C. 5801 et seq.) and the Federal Non-nuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.).

(Pub. L. 95-238, title III, § 306, Feb. 25, 1978, 92 Stat. 81.)

REFERENCES IN TEXT

The Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), referred to in subsec. (e), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of Title 42 and Tables.

The Federal Non-nuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), referred to in subsec. (e), is Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of Title 42 and Tables.

§ 2706. Informational and testing functions of Secretary of Energy

(a) Evaluations of new or improved technologies pursuant to written submissions

The Secretary of Energy shall, for the purposes of performing his responsibilities under this chapter, consider any reasonable new or improved technology, a description of which is submitted to the Secretary of Energy in writing, which could lead or contribute to the development of advanced automobile propulsion system technology.

(b) Testing by Administrator of Environmental Protection Agency of systems developed under research and development program or submitted by Secretary; scope and purposes of tests; submission of test data and results to Secretary

The Administrator of the Environmental Protection Agency shall test, or cause to be tested, in a facility subject to Environmental Protection Agency supervision, each advanced automobile propulsion system in an appropriately modified production vehicle equipped with such a system developed in whole or in part with Federal financial assistance under this chapter, or referred to the Administrator of the Environmental Protection Agency for such purpose by the Secretary of Energy, to determine whether such vehicle complies with any exhaust emission standards or any other requirements promulgated or reasonably expected to be promulgated under any provision of the Clean Air Act (42 U.S.C. 1857 et seq.) [42 U.S.C. 7401 et seq.], the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), or any other provision of Federal law administered by the Administrator of the Environmental Protection Agency. In conjunction with any test for compliance with exhaust emission standards under this section, the Administrator of the Environmental Protection Agency shall also conduct tests to determine the fuel economy of such vehicle. The Administrator of the Environmental Protection Agency shall submit all test data and the results of such tests to the Secretary of Energy.

(c) Collection, analysis, and dissemination of information, data, and materials to developers

The Secretary of Energy shall collect, analyze, and disseminate to developers information, data, and materials that may be relevant to the development of advanced automobile propulsion system technology.

(Pub. L. 95-238, title III, § 307, Feb. 25, 1978, 92 Stat. 82.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), referred to in subsec. (b), is Pub. L. 92-574, Oct. 27, 1972, 86 Stat. 1234, as amended, which is classified principally to chapter 65 (§ 4901 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 4901 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2703 of this title.

§ 2707. Patents and inventions; statutory provisions applicable; contracts or grants covered

Section 5908 of title 42 shall apply to any contract (including any assignment, substitution of parties, or subcontract thereunder) or grant, entered into, made, or issued by the Secretary of Energy under this chapter.

(Pub. L. 95-238, title III, § 308, Feb. 25, 1978, 92 Stat. 82.)

§ 2708. Comptroller General audit and examination of books, etc.; statutory provisions applicable; contracts or grants covered

Section 5876 of title 42 shall apply with respect to the authority of the Comptroller General to have access to and rights of examination of books, documents, papers, and records of recipients of financial assistance under this chapter; except that for the purposes of this title, the term "contract" (as used in section 2206 of title 42, insofar as it relates to such section 5876 of title 42) means "contract or grant".

(Pub. L. 95-238, title III, § 309, Feb. 25, 1978, 92 Stat. 82.)

§ 2709. Reports to Congress by Secretary of Energy on comprehensive program, etc.; survey, study, and report to Congress by Secretary of Energy on financial obligation guarantees

(a) As a separate part of the annual report submitted under section 5914(a) of title 42 with respect to the comprehensive plan and program then in effect under section 5905(a) and (b) of title 42, the Secretary of Energy shall submit to Congress an annual report of activities under this chapter. Such report shall include—

(1) a current comprehensive program definition for implementing this chapter;

(2) an evaluation of the state of automobile propulsion system research and development in the United States;

(3) the number and amount of contracts and grants made under this chapter;

(4) an analysis of the progress made in developing advanced automobile propulsion system technology; and

(5) suggestions for improvements in advanced automobile propulsion system research and development, including recommendations for legislation.

(b) The Secretary of Energy shall conduct a survey of developers, lending institutions, and other appropriate persons or institutions and shall otherwise make a study for the purpose of determining whether, and under what conditions, research, development, demonstration, and commercial availability of advanced automobile propulsion system technology may be aided by the guarantee of financial obligations by the Federal Government. The Secretary of Energy shall report the results of such survey and study to the Congress within 1 year after February 25, 1978. Such report shall include an examination of those stages of advanced automobile propulsion system technology research, development, demonstration, and commercialization for which financial obligation guarantees may be useful or appropriate and shall contain such legislative recommendations as may be necessary.

(Pub. L. 95-238, title III, § 310, Feb. 25, 1978, 92 Stat. 83.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2703 of this title.

§ 2710. Authorization of appropriations

There is authorized to be appropriated to carry out the purposes of this chapter, in addition to any amounts made available for such purposes pursuant to title I of this Act, the sum of $12,500,000 for the fiscal year ending September 30, 1978.

(Pub. L. 95-238, title III, § 312, Feb. 25, 1978, 92 Stat. 83.)

REFERENCES IN TEXT

Title I of this Act, referred to in text, is title I of Pub. L. 95-238, Feb. 25, 1978, 92 Stat. 47. For complete classification of this title to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2703 of this title.

CHAPTER 55—PETROLEUM MARKETING PRACTICES [NEW]

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SUBCHAPTER I—FRANCHISE PROTECTION

§ 2801. Definitions

As used in this subchapter:

(1)(A) The term "franchise" means any contract—

(i) between a refiner and a distributor,

(ii) between a refiner and a retailer,

(iii) between a distributor and another distributor, or

(iv) between a distributor and a retailer,

under which a refiner or distributor (as the case may be) authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such use.

(B) The term "franchise" includes—

(i) any contract under which a retailer or distributor (as the case may be) is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such occupancy;

(ii) any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed—

(I) under a trademark owned or controlled by a refiner; or

(II) under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned or distributed under a trademark owned or controlled on such date by a refiner; and

(iii) the unexpired portion of any franchise, as defined by the preceding provisions of this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.

(2) The term "franchise relationship" means the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

(3) The term "franchisor" means a refiner or distributor (as the case may be) who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(4) The term "franchisee" means a retailer or distributor (as the case may be) who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(5) The term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person.

(6) The term "distributor" means any person, including any affiliate of such person, who—

(A) purchases motor fuel for sale, consignment, or distribution to another; or

(B) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

(7) The term "retailer" means any person who purchases motor fuel for sale to the general public for ultimate consumption.

(8) The term "marketing premises" means, in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in conneciton with sale, consignment, or distribution of motor fuel.

(9) The term "leased marketing premises" means marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of motor fuel.

(10) The term "contract" means any oral or written agreement. For supply purposes, delivery levels during the same month of the previous year shall be prima facie evidence of an agreement to deliver such levels.

(11) The term "trademark" means any trademark, trade name, service mark, or other identifying symbol or name.

(12) The term "motor fuel" means gasoline and diesel fuel of a type distributed for use as a

fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

(13) The term "failure" does not include—

(A) any failure which is only technical or unimportant to the franchise relationship; or

(B) any failure for a cause beyond the reasonable control of the franchisee.

(14) The terms "fail to renew" and "nonrenewal" mean, with respect to any franchise relationship, a failure to reinstate, continue, or extend the franchise relationship—

(A) at the conclusion of the term, or on the expiration date, stated in the relevant franchise;

(B) at any time, in the case of the relevant franchise which does not state a term of duration or an expiration date; or

(C) following a termination (on or after June 19, 1978) of the relevant franchise which was entered into prior to June 19, 1978, and has not been renewed after such date.

(15) The term "affiliate" means any person who (other than by means of a franchise) controls, is controlled by, or is under common control with, any other person.

(16) The term "relevant geographic market area" includes a State or a standard metropolitan statistical area as periodically established by the Office of Management and Budget.

(17) The term "termination" includes cancellation.

(18) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

(19) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(Pub. L. 95-297, title I, § 101, June 19, 1978, 92 Stat. 322.)

SHORT TITLE

Section 1 of Pub. L. 95-297 provided: "That this Act [enacting this chapter and provision set out as a note under section 2822 of this title] may be cited as the 'Petroleum Marketing Practices Act'."

§ 2802. Franchise relationship

(a) General prohibition against termination or nonrenewal

Except as provided in subsection (b) of this section and section 2803 of this title, no franchisor engaged in the sale, consignment, or distribution of motor fuel in commerce may—

(1) terminate any franchise (entered into or renewed on or after June 19, 1978) prior to the conclusion of the term, or the expiration date, stated in the franchise; or

(2) fail to renew any franchise relationship (without regard to the date on which the relevant franchise was entered into or renewed).

(b) Precondition and grounds for termination or nonrenewal

(1) Any franchisor may terminate any franchise (entered into or renewed on or after June 19, 1978) or may fail to renew any franchise relationship, if—

(A) the notification requirements of section 2804 of this title are met; and

(B) such termination is based upon a ground described in paragraph (2) or such nonrenewal is based upon a ground described in paragraph (2) or (3).

(2) For purposes of this subsection, the following are grounds for termination of a franchise or nonrenewal of a franchise relationship:

(A) A failure by the franchisee to comply with any provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship, if the franchisor first acquired actual or constructive knowledge of such failure—

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or nonrenewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(B) A failure by the franchisee to exert good faith efforts to carry out the provisions of the franchise, if—

(i) the franchisee was apprised by the franchisor in writing of such failure and was afforded a reasonable opportunity to exert good faith efforts to carry out such provisions; and

(ii) such failure thereafter continued within the period which began not more than 180 days before the date notification of termination or nonrenewal was given pursuant to section 2804 of this title.

(C) The occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable, if such event occurs during the period the franchise is in effect and the franchisor first acquired actual or constructive knowledge of such occurrence—

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or nonrenewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(D) An agreement, in writing, between the franchisor and the franchisee to terminate the franchise or not to renew the franchise relationship, if—

(i) such agreement is entered into not more than 180 days prior to the date of such termination or, in the case of nonrenewal, not more than 180 days prior to the conclusion of the term, or the expiration date, stated in the franchise;

(ii) the franchisee is promptly provided with a copy of such agreement, together with the summary statement described in section 2804(d) of this title; and

(iii) within 7 days after the date on which the franchisee is provided a copy of such agreement, the franchisee has not posted by certified mail a written notice to the franchisor repudiating such agreement.

(E) In the case of any franchise entered into prior to June 19, 1978, and in the case of any franchise entered into or renewed on or after such date (the term of which is 3 years or longer, or with respect to which the franchisee was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located, if—

(i) such determination—

(I) was made after the date such franchise was entered into or renewed, and

(II) was based upon the occurrence of changes in relevant facts and circumstances after such date;

(ii) the termination or nonrenewal is not for the purpose of converting the premises, which are the subject of the franchise, to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises—

(I) the franchisor, during the 180-day period after notification was given pursuant to section 2804 of this title, either made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises, or, if applicable, offered the franchisee a right of first refusal of at least 45 days duration of an offer, made by another, to purchase such franchisor's interest in such premises; or

(II) in the case of the sale, transfer, or assignment to another person of the franchisor's interest in such premises in connection with the sale, transfer, or assignment to such other person of the franchisor's interest in one or more other marketing premises, if such other person offers, in good faith, a franchise to the franchisee on terms and conditions which are not discriminatory to the franchisee as compared to franchises then currently being offered by such other person or franchises then in effect and with respect to which such other person is the franchisor.

(3) For purposes of this subsection, the following are grounds for nonrenewal of a franchise relationship:

(A) The failure of the franchisor and the franchisee to agree to changes or additions to the provisions of the franchise, if—

(i) such changes or additions are the result of determinations made by the franchisor in good faith and in the normal course of business; and

(ii) such failure is not the result of the franchisor's insistence upon such changes or additions for the purpose of preventing the renewal of the franchise relationship.

(B) The receipt of numerous bona fide customer complaints by the franchisor concerning the franchisee's operation of the marketing premises, if—

(i) the franchisee was promptly apprised of the existence and nature of such complaints following receipt of such complaints by the franchisor; and

(ii) if such complaints related to the condition of such premises or to the conduct of any employee of such franchisee, the franchisee did not promptly take action to cure or correct the basis of such complaints.

(C) A failure by the franchisee to operate the marketing premises in a clean, safe, and healthful manner, if the franchisee failed to do so on two or more previous occasions and the franchisor notified the franchisee of such failures.

(D) In the case of any franchise entered into prior to June 19, 1978, (the unexpired term of which, on such date, is 3 years or longer) and, in the case of any franchise entered into or renewed on or after such date (the term of which was 3 years or longer, or with respect to which the franchisee was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business, if—

(i) such determination is—

(I) to convert the leased marketing premises to a use other than the sale or distribution of motor fuel,

(II) to materially alter, add to, or replace such premises,

(III) to sell such premises, or

(IV) that renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the franchisee;

(ii) with respect to a determination referred to in subclause (II) or (IV), such determination is not made for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises such franchisor, during the 90-day period after notification was given pursuant to section 2804 of this title, either—

(I) made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises; or

(II) if applicable, offered the franchisee a right of first refusal of at least 45-days duration of an offer, made by another, to purchase such franchisor's interest in such premises.

(c) Definition

As used in subsection (b)(2)(C) of this section, the term "an event which is relevant to the franchise relationship and as a result of which

termination of the franchise or nonrenewal of the franchise relationship is reasonable" includes events such as—

(1) fraud or criminal misconduct by the franchisee relevant to the operation of the marketing premises;

(2) declaration of bankruptcy or judicial determination of insolvency of the franchisee;

(3) continuing severe physical or mental disability of the franchisee of at least 3 months duration which renders the franchisee unable to provide for the continued proper operation of the marketing premises;

(4) loss of the franchisor's right to grant possession of the leased marketing premises through expiration of an underlying lease, if the franchisee was notified in writing, prior to the commencement of the term of the then existing franchise—

(A) of the duration of the underlying lease, and

(B) of the fact that such underlying lease might expire and not be renewed during the term of such franchise (in the case of termination) or at the end of such term (in the case of nonrenewal);

(5) condemnation or other taking, in whole or in part, of the marketing premises pursuant to the power of eminent domain;

(6) loss of the franchisor's right to grant the right to use the trademark which is the subject of the franchise, unless such loss was due to trademark abuse, violation of Federal or State law, or other fault or negligence of the franchisor, which such abuse, violation, or other fault or negligence is related to action taken in bad faith by the franchisor;

(7) destruction (other than by the franchisor) of all or a substantial part of the marketing premises;

(8) failure by the franchisee to pay to the franchisor in a timely manner when due all sums to which the franchisor is legally entitled;

(9) failure by the franchisee to operate the marketing premises for—

(A) 7 consecutive days, or

(B) such lesser period which under the facts and circumstances constitutes an unreasonable period of time;

(10) willful adulteration, mislabeling or misbranding of motor fuels or other trademark violations by the franchisee;

(11) knowing failure of the franchisee to comply with Federal, State, or local laws or regulations relevant to the operation of the marketing premises; and

(12) conviction of the franchisee of any felony involving moral turpitude.

(d) Compensation, etc., for franchisee upon condemnation or destruction of marketing premises

In the case of any termination of a franchise (entered into or renewed on or after June 19, 1978), or in the case of any nonrenewal of a franchise relationship (without regard to the date on which such franchise relationship was entered into or renewed)—

(1) if such termination or nonrenewal is based upon an event described in subsection (c)(5) of this section, the franchisor shall fairly apportion between the franchisor and the franchisee compensation, if any, received by the franchisor based upon any loss of business opportunity or good will; and

(2) if such termination or nonrenewal is based upon an event described in subsection (c)(7) of this section and the leased marketing premises are subsequently rebuilt or replaced by the franchisor and operated under a franchise, the franchisor shall, within a reasonable period of time, grant to the franchisee a right of first refusal of the franchise under which such premises are to be operated.

(Pub. L. 95-297, title I, § 102, June 19, 1978, 92 Stat. 324.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2803, 2804, 2805 of this title.

§ 2803. Trial and interim franchises

(a) Nonapplicability of statutory nonrenewal provisions

The provisions of section 2802 of this title shall not apply to the nonrenewal of any franchise relationship—

(1) under a trial franchise; or

(2) under an interim franchise.

(b) Definitions

For purposes of this section—

(1) The term "trial franchise" means any franchise—

(A) which is entered into on or after June 19, 1978;

(B) the franchisee of which has not previously been a party to a franchise with the franchisor;

(C) the initial term of which is for a period of not more than 1 year; and

(D) which is in writing and states clearly and conspicuously—

(i) that the franchise is a trial franchise;

(ii) the duration of the initial term of the franchise;

(iii) that the franchisor may fail to renew the franchise relationship at the conclusion of the initial term stated in the franchise by notifying the franchisee, in accordance with the provisions of section 2804 of this title, of the franchisor's intention not to renew the franchise relationship; and

(iv) that the provisions of section 2802 of this title, limiting the right of a franchisor to fail to renew a franchise relationship, are not applicable to such trial franchise.

(2) The term "trial franchise" does not include any unexpired period of any term of any franchise (other than a trial franchise, as defined by paragraph (1)) which was transferred or assigned by a franchisee to the extent authorized by the provisions of the franchise or any applicable provision of State law which permits such transfer or assignment, without regard to any provision of the franchise.

(3) The term "interim franchise" means any franchise—

(A) which is entered into on or after June 19, 1978;

(B) the term of which, when combined with the terms of all prior interim franchises between the franchisor and the franchisee, does not exceed 3 years;

(C) the effective date of which occurs immediately after the expiration of a prior franchise, applicable to the marketing premises, which was not renewed if such nonrenewal—

(i) was based upon a determination described in section 2802(b)(2)(E) of this title, and

(ii) the requirements of section 2802(b)(2)(E) of this title were satisfied; and

(D) which is in writing and states clearly and conspicuously—

(i) that the franchise is an interim franchise;

(ii) the duration of the franchise; and

(iii) that the franchisor may fail to renew the franchise at the conclusion of the term stated in the franchise based upon a determination made by the franchisor in good faith and in the normal course of business to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located if the requirements of section 2802(b)(2)(E) (ii) and (iii) of this title are satisfied.

(c) Nonrenewal upon meeting statutory notification requirements

If the notification requirements of section 2804 of this title are met, any franchisor may fail to renew any franchise relationship—

(1) under any trial franchise, at the conclusion of the initial term of such trial franchise; and

(2) under any interim franchise, at the conclusion of the term of such interim franchise, if—

(A) such nonrenewal is based upon a determination described in section 2802(b)(2)(E) of this title; and

(B) the requirements of section 2802(b)(2)(E)(ii) and (iii) of this title are satisfied.

(Pub. L. 95-297, title I, § 103, June 19, 1978, 92 Stat. 328.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2802, 2804, 2805 of this title.

§ 2804. Notification of termination or nonrenewal of franchise relationship

(a) General requirements applicable to franchisor

Prior to termination of any franchise or nonrenewal of any franchise relationship, the franchisor shall furnish notification of such termination or such nonrenewal to the franchisee who is a party to such franchise or such franchise relationship—

(1) in the manner described in subsection (c) of this section; and

(2) except as provided in subsection (b) of this section, not less than 90 days prior to the date on which such termination or nonrenewal takes effect.

(b) Additional requirements applicable to franchisor

(1) In circumstances in which it would not be reasonable for the franchisor to furnish notification, not less than 90 days prior to the date on which termination or nonrenewal takes effect, as required by subsection (a)(2) of this section—

(A) such franchisor shall furnish notification to the franchisee affected thereby on the earliest date on which furnishing of such notification is reasonably practicable; and

(B) in the case of leased marketing premises, such franchisor—

(i) may not establish a new franchise relationship with respect to such premises before the expiration of the 30-day period which begins—

(I) on the date notification was posted or personally delivered, or

(II) if later, on the date on which such termination or nonrenewal takes effect; and

(ii) may, if permitted to do so by the franchise agreement, repossess such premises and, in circumstances under which it would be reasonable to do so, operate such premises through employees or agents.

(2) In the case of any termination of any franchise or any nonrenewal of any franchise relationship pursuant to the provisions of section 2802(b)(2)(E) of this title or section 2803(c)(2) of this title, the franchisor shall—

(A) furnish notification to the franchisee not less than 180 days prior to the date on which such termination or nonrenewal takes effect; and

(B) promptly provide a copy of such notification, together with a plan describing the schedule and conditions under which the franchisor will withdraw from the marketing of motor fuel through retail outlets in the relevant geographic area, to the Governor of each State which contains a portion of such area.

(c) Manner and form of notification

Notification under this section—

(1) shall be in writing;

(2) shall be posted by certified mail or personally delivered to the franchisee; and

(3) shall contain—

(A) a statement of intention to terminate the franchise or not to renew the franchise relationship, together with the reasons therefor;

(B) the date on which such termination or nonrenewal takes effect; and

(C) the summary statement prepared under subsection (d) of this section.

(d) Preparation, publication, etc., of statutory summaries

(1) Not later than 30 days after June 19, 1978, the Secretary of Energy shall prepare and publish in the Federal Register a simple and concise summary of the provisions of this subchapter, including a statement of the respective

responsibilities of, and the remedies and relief available to, any franchisor and franchisee under this subchapter.

(2) In the case of summaries required to be furnished under the provisions of section 2802(b)(2)(D) of this title or subsection (c)(3)(C) of this section before the date of publication of such summary in the Federal Register, such summary may be furnished not later than 5 days after it is so published rather than at the time required under such provisions.

(Pub. L. 95-297, title I, § 104, June 19, 1978, 92 Stat. 329.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2802, 2803, 2805 of this title.

§ 2805. Enforcement provisions

(a) Maintenance of civil action by franchisee against franchisor; jurisdiction and venue; time for commencement of action

If a franchisor fails to comply with the requirements of section 2802 or 2803 of this title, the franchisee may maintain a civil action against such franchisor. Such action may be brought, without regard to the amount in controversy, in the district court of the United States in any judicial district in which the principal place of business of such franchisor is located or in which such franchisee is doing business, except that no such action may be maintained unless commenced within 1 year after the later of—

(1) the date of termination of the franchise or nonrenewal of the franchise relationship; or

(2) the date the franchisor fails to comply with the requirements of section 2802 or 2803 of this title.

(b) Equitable relief by court; bond requirements; grounds for nonexercise of court's equitable powers

(1) In any action under subsection (a) of this section, the court shall grant such equitable relief as the court determines is necessary to remedy the effects of any failure to comply with the requirements of section 2802 or 2803 of this title, including declaratory judgment, mandatory or prohibitive injunctive relief, and interim equitable relief.

(2) Except as provided in paragraph (3), in any action under subsection (a) of this section, the court shall grant a preliminary injunction if—

(A) the franchisee shows—

(i) the franchise of which he is a party has been terminated or the franchise relationship of which he is a party has not been renewed, and

(ii) there exist sufficiently serious questions going to the merits to make such questions a fair ground for litigation; and

(B) the court determines that, on balance, the hardships imposed upon the franchisor by the issuance of such preliminary injunctive relief will be less than the hardship which would be imposed upon such franchisee if such preliminary injunctive relief were not granted.

(3) Nothing in this subsection prevents any court from requiring the franchisee in any action under subsection (a) of this section to post a bond, in an amount established by the court, prior to the issuance or continuation of any equitable relief.

(4) In any action under subsection (a) of this section, the court need not exercise its equity powers to compel continuation or renewal of the franchise relationship if such action was commenced—

(A) more than 90 days after the date on which notification pursuant to section 2804(a) of this title was posted or personally delivered to the franchisee;

(B) more than 180 days after the date on which notification pursuant to section 2804(b)(2) of this title was posted or personally delivered to the franchisee; or

(C) more than 30 days after the date on which the termination of such franchise or the nonrenewal of such franchise relationship takes effect if less than 90 days notification was provided pursuant to section 2804(b)(1) of this title.

(c) Burden of proof; burden of going forward with evidence

In any action under subsection (a) of this section, the franchisee shall have the burden of proving the termination of the franchise or the nonrenewal of the franchise relationship. The franchisor shall bear the burden of going forward with evidence to establish as an affirmative defense that such termination or nonrenewal was permitted under section 2802(b) or 2803 of this title, and, if applicable, that such franchisor complied with the requirements of section 2802(d) of this title.

(d) Actual and exemplary damages and attorney and expert witness fees to franchisee; determination by court of right to exemplary damages and amount; attorney and expert witness fees to franchisor for frivolous actions

(1) If the franchisee prevails in any action under subsection (a) of this section, such franchisee shall be entitled—

(A) consistent with the Federal Rules of Civil Procedure, to actual damages;

(B) in the case of any such action which is based upon conduct of the franchisor which was in willful disregard of the requirements of section 2802 or 2803 of this title, or the rights of the franchisee thereunder, to exemplary damages, where appropriate; and

(C) to reasonable attorney and expert witness fees to be paid by the franchisor, unless the court determines that only nominal damages are to be awarded to such franchisee, in which case the court, in its discretion, need not direct that such fees be paid by the franchisor.

(2) The question of whether to award exemplary damages and the amount of any such award shall be determined by the court and not by a jury.

(3) In any action under subsection (a) of this section, the court may, in its discretion, direct that reasonable attorney and expert witness fees be paid by the franchisee if the court finds that such action is frivolous.

(e) Discretionary power of court to compel continuation or renewal of franchise relationship; grounds for noncompulsion; right of franchisee to actual damages and attorney and expert witness fees unaffected

(1) In any action under subsection (a) of this section with respect to a failure of a franchisor to renew a franchise relationship in compliance with the requirements of section 2802 of this title, the court may not compel a continuation or renewal of the franchise relationship if the franchisor demonstrates to the satisfaction of the court that—

(A) the basis for such nonrenewal is a determination made by the franchisor in good faith and in the normal course of business—

(i) to convert the leased marketing premises to a use other than the sale or distribution of motor fuel,

(ii) to materially alter, add to, or replace such premises,

(iii) to sell such premises,

(iv) to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located, or

(v) that renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the franchisee; and

(B) the requirements of section 2804 of this title have been complied with.

(2) The provisions of paragraph (1) shall not affect any right of any franchisee to recover actual damages and reasonable attorney and expert witness fees under subsection (d) of this section if such nonrenewal is prohibited by section 2802 of this title.

(Pub. L. 95–297, title I, § 105, June 19, 1978, 92 Stat. 331.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 2806. Relationship of statutory provisions to State and local laws

(a) To the extent that any provision of this subchapter applies to the termination (or the furnishing of notification with respect thereto) of any franchise, or to the nonrenewal (or the furnishing of notification with respect thereto) of any franchise relationship, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to termination (or the furnishing of notification with respect thereto) of any such franchise or to the nonrenewal (or the furnishing of notification with respect thereto) of any such franchise relationship unless such provision of such law or regulation is the same as the applicable provision of this subchapter.

(b) Nothing in this subchapter authorizes any transfer or assignment of any franchise or prohibits any transfer or assignment of any franchise as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.

(Pub. L. 95–297, title I, § 106, June 19, 1978, 92 Stat. 332.)

SUBCHAPTER II—OCTANE DISCLOSURE

§ 2821. Definitions

As used in this subchapter:

(1) The term "octane rating" means the rating of the antiknock characteristics of a grade or type of automotive gasoline as determined by dividing by 2 the sum of the research octane number plus the motor octane number, unless another procedure is prescribed under section 2823(c)(3) of this title, in which case such term means the rating of such characteristics as determined under the procedure so prescribed.

(2) The terms "research octane number" and "motor octane number" have the meanings given such terms in the specifications of the American Society for Testing and Materials (ASTM) entitled "Standard Specifications for Automotive Gasoline" designated D 439 (as in effect on June 19, 1978) and, with respect to any grade or type of automotive gasoline, are determined in accordance with test methods set forth in ASTM standard test methods designated D 2699 and D 2700 (as in effect on such date).

(3) The term "knock" means the combustion of a fuel spontaneously in localized areas of a cylinder of a spark-ignition engine, instead of the combustion of such fuel progressing from the spark.

(4) The term "gasoline retailer" means any person who markets automotive gasoline to the general public for ultimate consumption.

(5) The term "refiner" means any person engaged in—

(A) the refining of crude oil to produce automotive gasoline; or

(B) the importation of automotive gasoline.

(6) The term "automotive gasoline" means gasoline of a type distributed for use as a fuel in any motor vehicle.

(7) The term "motor vehicle" means any self-propelled four-wheeled vehicle, of less than 6,000 pounds gross vehicle weight, which is designed primarily for use on public streets, roads, and highways.

(8) The term "new motor vehicle" means any motor vehicle the equitable or legal title to which has not previously been transferred to an ultimate purchaser.

(9) The term "ultimate purchaser" means, with respect to any item, the first person who purchases such item for purposes other than resale.

(10) The term "manufacturer" means any person who imports, manufactures, or assembles motor vehicles for sale.

(11) The term "octane requirement" means, with respect to automotive gasoline for use in a motor vehicle or a class thereof, imported,

manufactured, or assembled by a manufacturer, the minimum octane rating of such automotive gasoline which such manufacturer recommends for the efficient operation of such motor vehicle, or a substantial portion of such class, without knocking.

(12) The term "model year" means a manufacturer's annual production period (as determined by the Federal Trade Commission) for motor vehicles or a class of motor vehicles. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(13) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

(14) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(15) the term "person", for purposes of applying any provision of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] with respect to any provision of the subchapter, includes a partnership and a corporation.

(16) The term "distributor" means any person who receives gasoline and distributes such gasoline to another person other than the ultimate purchaser.

(Pub. L. 95-297, title II, § 201, June 19, 1978, 92 Stat. 333.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in par.(15), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2823 of this title.

§ 2822. Octane testing and disclosure requirements

(a) Determination and certification of octane rating by refiner distributing automotive gasoline

Each refiner who distributes automotive gasoline in commerce shall—

(1) determine the octane rating of any such gasoline; and

(2) if such refiner distributes such gasoline to any person other than the ultimate purchaser, certify, consistent with the determination made under paragraph (1), the octane rating of such gasoline.

(b) Certification of octane rating by distributor receiving and distributing automotive gasoline with certified octane rating; use of octane rating for certification by distributor

Each distributor who receives automotive gasoline, the octane rating of which is certified to him under this section, and distributes such gasoline in commerce to another person other than the ultimate purchaser shall certify to such other person the octane rating of such gasoline consistent with—

(1) the octane rating of such gasoline certified to such distributor; or

(2) if such distributor elects (at such time and in such manner as the Federal Trade Commission may, by rule, prescribe), the octane rating of such gasoline determined by such distributor.

(c) Display of octane rating by gasoline retailer; use of octane rating for display

Each gasoline retailer shall display in a clear and conspicuous manner, at the point of sale to ultimate purchasers of automotive gasoline, the octane rating of such gasoline, which octane rating shall be consistent with—

(1) the octane rating of such gasoline certified to such retailer under subsection (a)(2) or (b) of this section;

(2) if such gasoline retailer elects (at such time and in such manner as the Federal Trade Commission may, by rule, prescribe), the octane rating of such gasoline determined by such retailer for such gasoline; or

(3) if such gasoline retailer is a refiner, the octane rating of such gasoline determined under subsection (a)(1) of this section.

(d) Display or representation of octane requirements for new motor vehicles by manufacturer of such vehicles; promulgation of rules by Federal Trade Commission

The Federal Trade Commission shall, by rule, prescribe requirements, applicable to any manufacturer of new motor vehicles, with respect to the display on each such motor vehicle (or representation in connection with the sale of each such motor vehicle) of the octane requirement of such motor vehicle.

(e) Representation of antiknock characteristics of automotive gasoline by person distributing automotive gasoline; use of octane rating in representation

No person who distributes automotive gasoline in commerce may make any representation respecting the antiknock characteristics of such gasoline unless such representation fairly discloses the octane rating of such gasoline consistent with such gasoline's octane rating as certified to or determined by such person under the foregoing provisions of this section.

(f) Additional statutory considerations respecting certification, display, or representation of octane rating of automotive gasoline

For purposes of this section, the octane rating of any automotive gasoline shall be considered to be certified, displayed, or represented by any person consistent with the rating certified to, or determined by, such person—

(1) in the case of automotive gasoline which consists of a blend of two or more quantities of automotive gasoline of differing octane ratings, only if the rating certified, displayed, or represented by such person is the average of the octane ratings of such quantities, weighted by volume; or

(2) in the case of gasoline which does not consist of such a blend, only if the octane

rating such person certifies, displays, or represents is the same as the octane rating of such gasoline certified to, or determined by, such person.

(g) Nonapplicability of statutory requirements

The foregoing provisions of this section shall not apply—

(1) to any representation (by display at the point of sale or by other means) of any characteristics of any automotive gasoline other than its octane rating; or

(2) to the identification of automotive gasoline at the point of sale (or elsewhere) by the trademark, trade name, or other identifying symbol or mark used in connection with the sale of such gasoline.

(h) Display or representation of octane requirement of motor vehicle not to create express or implied warranty under State or Federal law respecting knocking characteristics of automotive gasoline

Any display or representation, with respect to the octane requirement of any motor vehicle, required to be made under any rule prescribed under subsection (d) of this section shall not create an express or implied warranty under State or Federal law that any automotive gasoline the octane rating of which equals or exceeds such octane requirement—

(1) may be used as a fuel in all motor vehicles of the same class as that motor vehicle without knocking; or

(2) may be used as a fuel in such motor vehicle under all operating conditions without knocking.

(Pub. L. 95-297, title II, § 202, June 19, 1978, 92 Stat. 334.)

EFFECTIVE DATE

Section 205 of Pub. L. 95-297 provided that:

"(a) Sections 202(a)(1) [subsec. (a)(1) of this section] and 203(b) [section 2823(b) of this title] shall take effect on the first day of the first calendar month beginning more than 6 months after the date of the enactment of this Act [June 19, 1978].

"(b) Subsections (a)(2), (b), (c), and (e) of section 202 [subsecs. (a)(2), (b), (c), and (e) of this section] shall take effect on the first day of the first calendar month beginning more than 9 months after such date of enactment [June 19, 1978].

"(c) Rules under section 202(d) [subsec. (d) of this section] may not take effect earlier than the beginning of the first motor vehicle model year which begins more than 9 months after such date of enactment [June 19, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2823 of this title.

§ 2823. Administration and enforcement provisions

(a) Procedural, investigative, and enforcement powers of Federal Trade Commission

The Federal Trade Commission shall have procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements of this subchapter and rules prescribed pursuant to the requirements of this subchapter, to further define terms used in this subchapter, and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were part of this subchapter.

(b) Testing, certification, and notice requirements of Environmental Protection Agency; interagency enforcement agreements between Federal Trade Commission and Environmental Protection Agency and other Federal agencies

(1) The Environmental Protection Agency shall—

(A) conduct field testing of the octane rating of automotive gasoline, comparing the tested octane rating of gasoline at retail outlets with the octane rating posted at those outlets;

(B) certify the results of such tests and comparisons to the Federal Trade Commission; and

(C) notify the Federal Trade Commission of any failure to post the octane rating discovered in the course of such field testing.

(2) The Federal Trade Commission may enter into interagency agreements with the Environmental Protection Agency and such other agencies of the United States as the Commission determines appropriate for the purpose of assuring enforcement of the provisions of this subchapter in a manner which is consistent with—

(A) minimizing the cost of field inspection and related compliance activities; and

(B) reducing duplication of similar or related field compliance activities performed by agencies of the United States.

(c) Promulgation of rules by Federal Trade Commission; contents; requirements for compliance with rules

(1) Not later than 6 months after June 19, 1978, the Federal Trade Commission shall, by rule, prescribe and make effective—

(A) a uniform method by which a person may certify to another the octane rating of automotive gasoline; and

(B) a uniform method of displaying the octane rating of automotive gasoline at the point of sale to ultimate purchasers.

(2) Effective on and after the effective date of the rule prescribed under paragraph (1), any person—

(A) shall be considered to satisfy the requirements of subsection (a) or (b) of section 2822 of this title, as the case may be, only if such person complies with the requirements established pursuant to paragraph (1)(A); and

(B) shall be considered to satisfy the requirements of section 2822(c) of this title only if such person complies with the requirements established pursuant to paragraph (1)(B).

(3) The Federal Trade Commission may, by rule, prescribe procedures for determination of the octane rating of automotive gasoline which varies from that prescribed in section 2821(1) of this title. In prescribing such rule, the Commission—

(A) shall consider—

(i) ease of administration and enforcement, and

(ii) industry practices in the distribution and marketing of automotive gasoline; and

(B) may permit adjustments in such octane rating to take into account the effects of altitude, temperature, and humidity.

(4) The Federal Trade Commission may, by rule, prescribe and make effective a method of determining the octane rating of automotive gasoline which consists of a blend of two or more quantities of automotive gasoline of different octane ratings if the Federal Trade Commission finds that the method prescribed more accurately reflects the octane rating of such blend than the weighted-average method set forth in section 2822(f)(1) of this title. Effective on and after the effective date of such rule, any person shall be considered to satisfy the requirements of section 2822(f)(1) of this title only if such person utilizes the method prescribed in such rule (in lieu of the method set forth in section 2822(f)(1) of this title).

(d) Statutory provisions applicable for promulgation of rules

(1) Except as provided in paragraph (2), rules under this subchapter shall be prescribed in accordance with section 553 of title 5, except that interested persons shall be afforded an opportunity to present written and oral data, views, and arguments with respect to any proposed rule.

(2) Rules prescribed under subsection (c)(3) of this section and section 2822(d) of this title shall be prescribed on the record after opportunity for an agency hearing.

(3) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) shall not apply with respect to any rule prescribed under this subchapter.

(e) Acts or practices constituting violations

It shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C. 45(a)(1)]) for any person to violate subsection (a), (b), (c), or (e) of section 2822 of this title, or a rule prescribed under subsection (d) of section 2822 of this title. For purposes of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] (including any remedy or penalty applicable to any violation thereof) such a violation shall be treated as a violation of a rule under such Act respecting unfair or deceptive acts or practices; except that for purposes of section 5(m)(1)(A) of such Act [15 U.S.C. 45(m)(1)(A)], the term "or knowledge fairly implied on the basis of objective circumstances" shall not apply to any violation by any gasoline retailer of the requirements of section 2822(c) or (e) of this title.

(Pub. L. 95-297, title II, § 203, June 19, 1978, 92 Stat. 335.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (e), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

EFFECTIVE DATE

Subsec. (b) of this section effective on the first day of the first calendar month beginning more than 6 months after June 19, 1978, see section 205(a) of Pub. L. 95-297, set out as an Effective Date note under section 2822 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2821 of this title.

§ 2824. Relationship of statutory provisions to State and local laws

To the extent that any provision of this subchapter applies to any act or omission, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this subchapter.

(Pub. L. 95-297, title II, § 204, June 19, 1978, 92 Stat. 337.)

SUBCHAPTER III—SUBSIDIZATION OF MOTOR FUEL MARKETING

§ 2841. Study by Secretary of Energy

(a) Consultation with Chairman of Federal Trade Commission, Attorney General, and other agencies deemed appropriate by Secretary

The Secretary of Energy, in consultation with the Chairman of the Federal Trade Commission and the Attorney General and other agencies as the Secretary deems appropriate, shall conduct a study of the extent to which producers, refiners, and other suppliers of motor fuel subsidize the sale of such motor fuel at retail or wholesale with profits obtained from other operations.

(b) Scope

Such study shall examine—

(1) the role of vertically integrated operations in facilitating subsidization of sales of motor fuel at wholesale or retail;

(2) the extent to which such subsidization is predatory and presents a threat to competition;

(3) the profitability of various segments of the petroleum industry;

(4) the impact of prohibiting such subsidization on the competitive viability of various segments of the petroleum industry, on prices of motor fuel to consumers and on the health and structure of the petroleum industry as a whole; and

(5) such other matters as the Secretary considers appropriate.

(c) Notice to interested parties and opportunity to present written and oral data, views and arguments

In conducting the study required by this section, the Secretary shall give appropriate notice and afford interested persons an opportunity to present written and oral data, views and arguments concerning such study.

(d) Report to Congress; contents and time for submission; Presidential promulgation of rules establishing interim measures; submission data and duration of interim measures; Congressional approval of interim measures

(1) The Secretary shall report the results of the study required by this section, together with such recommendations for legislative action and such statistical evidence as he deems appropriate to the Congress on or before the expiration of the eighteenth month after June 19, 1978.

(2) If the President determines that interim measures are necessary and appropriate to maintain the competitive viability of the marketing sector of the petroleum industry during Congressional consideration of the recommendations contained in the report submitted under paragraph (1), he shall prescribe, by rule, in accordance with the procedures set forth in section 6393(a) of title 42 such interim measures.

(3) No interim measure proposed by the President under this section may be submitted after January 1, 1980, and the effect of such measure if approved by the Congress under paragraph (4) may not extend beyond 18 months after such Congressional approval.

(4) Such interim measure shall not take effect unless approved by both Houses of Congress as if it were a contingency plan under section 6422 of title 42: *Provided*, That the 60-day period referred to in such section shall be extended to 90 days for purposes of this section.

(e) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 95–297, title III, § 301, June 19, 1978, 92 Stat. 337.)

CHAPTER 56—NATIONAL CLIMATE PROGRAM [NEW]

Sec.

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 31 section 25.

§ 2901. Findings

The Congress finds and declares the following:

(1) Weather and climate change affect food production, energy use, land use, water resources and other factors vital to national security and human welfare.

(2) An ability to anticipate natural and man-induced changes in climate would contribute to the soundness of policy decisions in the public and private sectors.

(3) Significant improvements in the ability to forecast climate on an intermediate and long-term basis are possible.

(4) Information regarding climate is not being fully disseminated or used, and Federal efforts have given insufficent attention to assessing and applying this information.

(5) Climate fluctuation and change occur on a global basis, and deficiencies exist in the system for monitoring global climate changes. International cooperation for the purpose of sharing the benefits and costs of a global effort to understand climate is essential.

(6) The United States lacks a well-defined and coordinated program in climate-related research, monitoring, assessment of effects, and information utilization.

(Pub. L. 95–367, § 2, Sept. 17, 1978, 92 Stat. 601.)

SHORT TITLE

Section 1 of Pub. L. 95–367 provided: "That this Act [which enacted this chapter, amended section 25 of Title 31, Money and Finance, and enacted provisions set out as a note under section 25 of Title 31] may be cited as the 'National Climate Program Act'."

§ 2902. Purpose

It is the purpose of the Congress in this chapter to establish a national climate program that will assist the Nation and the world to understand and respond to natural and man-induced climate processes and their implications.

(Pub. L. 95–367, § 3, Sept. 17, 1978, 92 Stat. 601.)

§ 2903. Definitions

As used in this chapter, unless the context otherwise requires:

(1) The term "Office" means the National Climate Program Office.

(2) The term "Program" means the National Climate Program.

(3) The term "Secretary" means the Secretary of Commerce.

(Pub. L. 95–367, § 4, Sept. 17, 1978, 92 Stat. 601.)

§ 2904. National Climate Program

(a) Establishment

The President shall establish a National Climate Program in accordance with the provisions, findings and purposes of this chapter.

(b) Duties

The President shall—

(1) promulgate the 5-year plans described in subsection (d)(9) of this section;

(2) define the roles in the Program of Federal officers, departments, and agencies, including the Departments of Agriculture,

Commerce, Defense, Energy, Interior, State, and Transportation; the Environmental Protection Agency; the National Aeronautics and Space Administration; the Council on Environmental Quality; the National Science Foundation; and the Office of Science and Technology Policy; and

(3) provide for Program coordination.

(c) National Climate Program Office

The Secretary shall establish within the Department of Commerce a National Climate Program Office not later than 30 days after September 17, 1978. The Office shall be the lead entity responsible for administering the Program. Each Federal officer, employee, department and agency involved in the Program shall cooperate with the Secretary in carrying out the provisions of this chapter.

(d) Program elements

The Program shall include, but not be limited to, the following elements:

(1) assessments of the effect of climate on the natural environment, agricultural production, energy supply and demand, land and water resources, transportation, human health and national security. Such assessments shall be conducted to the maximum extent possible by those Federal agencies having national programs in food, fiber, raw materials, energy, transportation, land and water management, and other such responsibilities, in accordance with existing laws and regulations. Where appropriate such assessments may include recommendations for action;

(2) basic and applied research to improve the understanding of climate processes, natural and man induced, and the social, economic, and political implications of climate change;

(3) methods for improving climate forecasts on a monthly, seasonal, yearly, and longer basis;

(4) global data collection, and monitoring and analysis activities to provide reliable, useful and readily available information on a continuing basis;

(5) systems for the management and active dissemination of climatological data, information and assessments, including mechanisms for consultation with current and potential users;

(6) measures for increasing international cooperation in climate research, monitoring, analysis and data dissemination;

(7) mechanisms for intergovernmental climate-related studies and services including participation by universities, the private sector and others concerned with applied research and advisory services;

(8) experimental climate forecast centers, which shall (A) be responsible for making and routinely updating experimental climate forecasts of a monthly, seasonal, annual, and longer nature, based on a variety of experimental techniques; (B) establish procedures to have forecasts reviewed and their accuracy evaluated; and (C) protect against premature reliance on such experimental forecasts; and

(9) a preliminary 5-year plan, to be submitted to the Congress for review and comment, not later than 180 days after September 17, 1978, and a final 5-year plan to be submitted to the Congress not later than 1 year after September 17, 1978, that shall be revised and extended biennially. Each plan shall establish the goals and priorities for the Program, including the intergovernmental program under section 2905 of this title, over the subsequent 5-year period, and shall contain details regarding (A) the role of Federal agencies in the programs, (B) Federal funding required to enable the Program to achieve such goals, and (C) Program accomplishments that must be achieved to ensure that Program goals are met within the time frame established by the plan.

(e) Advisory committee and interagency groups

(1) The Secretary shall establish and maintain an advisory committee of users and producers of climate data, information and services to advise the Secretary and the Congress on the conduct of the Program. Members of such committee shall not be employed by the Federal Government and may receive compensation at the daily rate for GS–16 of the General Schedule for each day engaged in the actual performance of their duties for the committee and while so serving away from their homes or regular place of business may be allowed travel expenses, including per diem in lieu of subsistence.

(2) The Secretary shall establish and maintain such interagency groups as are necessary and appropriate to assist in carrying out responsibilities under this chapter.

(f) Cooperation

(1) The Program shall be conducted so as to encourage cooperation with, and participation in the Program by, other organizations or agencies involved in related activities. For this purpose the Secretary shall cooperate and participate with other Federal agencies, and foreign, international, and domestic organizations and agencies involved in international or domestic climate-related programs.

(2) The Secretary and the Secretary of State shall cooperate in (A) providing representation at climate-related international meetings and conferences in which the United States participates, and (B) coordinating the activities of the Program with the climate programs of other nations and international agencies and organizations, including the World Meteorological Organization, the International Council of Scientific Unions, the United Nations Environmental Program, the United Nations Educational, Scientific, and Cultural Organization, the World Health Organization, and Food and Agriculture Organization.

(g) Budgeting

Each Federal agency and department participating in the Program, shall prepare and submit to the Office of Management and Budget, on or before the date of submission of departmental requests for appropriations to the Office of Management and Budget, an annual request for appropriations for the Program for the subsequent fiscal year. The Office of Management and Budget shall review the request for appropriations as an integrated, coherent, multiagency request.

(Pub. L. 95-367, § 5(a)-(g)(1), Sept. 17, 1978, 92 Stat. 601.)

REFERENCES IN TEXT

GS-16 of the General Schedule, referred to in subsec. (e), is set out under section 5332 of Title 5, Government Organization and Employees.

CODIFICATION

Subsec. (g) of this section in the original was par. (1) of section 5(g) of Pub. L. 95-367 and has been set out without such par. (1) designation for purposes of codification. Par. (2) of such section amended section 25 of Title 31, Money and Finance, and enacted provisions set out as a note under section 25 of Title 31.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2906 of this title.

§ 2905. Intergovernmental climate programs

(a) Establishment

The Secretary shall establish a program for Federal and State cooperative activities in climate studies and advisory services. The Secretary is authorized to make annual grants to any State or group of States, such grants to be made available to public or private educational institutions, to State agencies and to other persons or institutions qualified to conduct climate-related studies or provide climate-related services. Such grants may be made for not more than 50 percent of the costs, in any one year, of the research conducted or services provided under the grant. Federal funds received from other sources shall not be used to pay the remaining share of the cost of such research or services. The Secretary shall work with other appropriate mission agencies in conducting this program.

(b) Detail of the intergovernmental program

The intergovernmental program shall provide, among others, the following State and regional services and functions:

(1) studies relating to and analyses of climatic effects on agricultural production, water resources, energy needs, and other critical sectors of the economy;

(2) atmospheric data collection and monitoring on a statewide and regional basis;

(3) advice to regional, State, and local government agencies regarding climate-related issues;

(4) information to users within the State regarding climate and climatic effects; and

(5) information to the Secretary regarding the needs of persons within the State of climate-related services, information and data.

(c) Intergovernmental program requirements

Prior to making a grant to any State or group of States under this section, the Secretary shall find that—

(1) the State, or each of the States in a group, has adopted a State climate program in accordance with the provisions of this chapter and rules and regulations promulgated by the Secretary; and

(2) the State, or each of the States in a group has—

(A) integrated its climate program with the Program; and

(B) established an effective mechanism for consultation and coordination with Federal and local government officals and users within the State.

The Secretary shall insure that grants made to a State or group of States under this section are made on an equitable basis.

(Pub. L. 95-367, § 6, Sept. 17, 1978, 92 Stat. 603.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2904, 2908 of this title.

§ 2906. Annual report

The Secretary shall prepare and submit to the President and the authorizing committees of the Congress, not later than January 30 of each year, a report on the activities conducted pursuant to this chapter during the preceding fiscal year, including—

(a) a summary of the achievements of the Program during the previous fiscal year;

(b) an analysis of the progress made toward achieving the goals and objectives of the Program;

(c) a copy of the 5-year plan and any changes made in such plan;

(d) a summary of the multiagency budget request for the Program of section 2904(g) of this title; and

(e) any recommendations for additional legislation which may be required to assist in achieving the purposes of this chapter.

(Pub. L. 95-367, § 7, Sept. 17, 1978, 92 Stat. 604.)

§ 2907. Contract and grant authority; records and audits

(a) Functions vested in any Federal officer or agency by this chapter or under the Program may be exercised through the facilities and personnel of the agency involved or, to the extent provided or approved in advance in appropriation Acts, by other persons or entities under contracts or grant arrangements entered into by such officer or agency.

(b)(1) Each person or entity to which Federal funds are made available under a contract or grant arrangement as authorized by this chapter shall keep such records as the Director of the Office shall prescribe, including records which fully disclose the amount and disposition by such person or entity of such funds, the total cost of the activities for which such funds were so made available, the amount of that portion of such cost supplied from other sources, and such other records as will facilitate an effective audit.

(2) The Director of the Office and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of 3 years after the completion of the activities (referred to in paragraph (1)) of any person or entity pursuant to any contract or grant arrangement referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such person or entity which, in the judgment of the Director or the Comptroller General, may be

related or pertinent to such contract or grant arrangement.

(Pub. L. 95-367, § 8, Sept. 17, 1978, 92 Stat. 604.)

§ 2908. Authorization of appropriations

(a) General authorization of appropriation

In addition to any other funds otherwise authorized to be appropriated for the purpose of conducting climate-related programs, there are authorized to be appropriated to the Secretary, for the purpose of carrying out the provisions of this chapter, not to exceed $50,000,000 for the fiscal year ending September 30, 1979, and not to exceed $65,000,000 for the fiscal year ending September 30, 1980.

(b) Authorization of appropriation for grants

There are authorized to be appropriated to the Secretary sums not to exceed $10,000,000 for the fiscal year ending September 30, 1979, and not to exceed $10,000,000 for the fiscal year ending September 30, 1980, as may be necessary for grants under section 2905 of this title, to remain available until expended.

(Pub. L. 95-367, § 9, Sept. 17, 1978, 92 Stat. 605.)

CHAPTER 57—INTERSTATE HORSERACING [NEW]

Sec.
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(a) District court jurisdiction.
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§ 3001. Congressional findings and policy

(a) The Congress finds that—

(1) the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders;

(2) the Federal Government should prevent interference by one State with the gambling policies of another, and should act to protect identifiable national interests; and

(3) in the limited area of interstate off-track wagering on horseraces, there is a need for Federal action to ensure States will continue to cooperate with one another in the acceptance of legal interstate wagers.

(b) It is the policy of the Congress in this chapter to regulate interstate commerce with respect to wagering on horseracing, in order to further the horseracing and legal off-track betting industries in the United States.

(Pub. L. 95-515, § 2, Oct. 25, 1978, 92 Stat. 1811.)

EFFECTIVE DATE

Section 9 of Pub. L. 95-515 provided that:

"(a) The provisions of this Act [this chapter] shall take effect on the date of enactment of this Act [Oct. 25, 1978], and, except as provided in subsection (b) of this section, shall apply to any interstate off-track wager accepted on or after such date of enactment.

"(b)(1) The provisions of this Act [this chapter] shall not apply to any interstate off-track wager which is accepted pursuant to a contract existing on May 1, 1978.

"(2) The provisions of this Act shall not apply to any form of legal non-parimutuel off-track betting existing in a State on May 1, 1978.

"(3) The provisions of subsection (b) of section 5 of this Act [section 3004(b) of this title] shall not apply to any parimutuel off-track betting system existing on May 1, 1978, in a State which does not conduct parimutuel horseracing on the date of enactment of this Act [Oct. 25, 1978]."

SHORT TITLE

Section 1 of Pub. L. 95-515 provided that: "This Act [enacting this chapter] may be cited as the 'Interstate Horseracing Act of 1978'."

§ 3002. Definitions

For the purposes of this chapter the term—

(1) "person" means any individual, association, partnership, joint venture, corporation, State or political subdivision thereof, department, agency, or instrumentality of a State or political subdivision thereof, or any other organization or entity;

(2) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(3) "interstate off-track wager" means a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State;

(4) "on-track wager" means a wager with respect to the outcome of a horserace which is placed at the racetrack at which such horserace takes place;

(5) "host State" means the State in which the horserace subject to the interstate wager takes place;

(6) "off-track State" means the State in which an interstate off-track wager is accepted;

(7) "off-track betting system" means any group which is in the business of accepting wagers on horseraces at locations other than the place where the horserace is run, which business is conducted by the State or licensed or otherwise permitted by State law;

(8) "off-track betting office" means any location within an off-track State at which off-track wagers are accepted;

(9) "host racing association" means any person who, pursuant to a license or other permission granted by the host State, conducts the horserace subject to the interstate wager;

(10) "host racing commission" means that person designated by State statute or, in the absence of statute, by regulation, with jurisdiction to regulate the conduct of racing within the host State;

(11) "off-track racing commission" means that person designated by State statute or, in

the absence of statute, by regulation, with jurisdiction to regulate off-track betting in that State;

(12) "horsemen's group" means, with reference to the applicable host racing association, the group which represents the majority of owners and trainers racing there, for the races subject to the interstate off-track wager on any racing day;

(13) "parimutuel" means any system whereby wagers with respect to the outcome of a horserace are placed with, or in, a wagering pool conducted by a person licensed or otherwise permitted to do so under State law, and in which the participants are wagering with each other and not against the operator;

(14) "currently operating tracks" means racing associations conducting parimutuel horseracing at the same time of day (afternoon against afternoon; nighttime against nighttime) as the racing association conducting the horseracing which is the subject of the interstate off-track wager;

(15) "race meeting" means those scheduled days during the year a racing association is granted permission by the appropriate State racing commission to conduct horseracing;

(16) "racing day" means a full program of races at a specified racing association on a specified day;

(17) "special event" means the specific individual horserace which is deemed by the off-track betting system to be of sufficient national significance and interest to warrant interstate off-track wagering on that event or events;

(18) "dark days" means those days when racing of the same type does not occur in an off-track State within 60 miles of an off-track betting office during a race meeting, including, but not limited to, a dark weekday when such racing association or associations run on Sunday, and days when a racing program is scheduled but does not take place, or cannot be completed due to weather, strikes and other factors not within the control of the off-track betting system;

(19) "year" means calendar year;

(20) "takeout" means that portion of a wager which is deducted from or not included in the parimutuel pool, and which is distributed to persons other than those placing wagers;

(21) "regular contractual process" means those negotiations by which the applicable horsemen's group and host racing association reach agreements on issues regarding the conduct of horseracing by the horsemen's group at that racing association;

(22) "terms and conditions" includes, but is not limited to, the percentage which is paid by the off-track betting system to the host racing association, the percentage which is paid by the host racing association to the horsemen's group, as well as any arrangements as to the exclusivity between the host racing association and the off-track betting system.

(Pub. L. 95-515, § 3, Oct. 25, 1978, 92 Stat. 1811.)

§ 3003. Acceptance of interstate off-track wager

No person may accept an interstate off-track wager except as provided in this chapter.

(Pub. L. 95-515, § 4, Oct. 25, 1978, 92 Stat. 1813.)

§ 3004. Regulation of interstate off-track wagering

(a) Consent of host racing association, host racing commission, and off-track racing commission as prerequisite to acceptance of wager

An interstate off-track wager may be accepted by an off-track betting system only if consent is obtained from—

(1) the host racing association, except that—

(A) as a condition precedent to such consent, said racing association (except a not-for-profit racing association in a State where the distribution of off-track betting revenues in that State is set forth by law) must have a written agreement with the horsemen's group, under which said racing association may give such consent, setting forth the terms and conditions relating thereto; provided,

(B) that where the host racing association has a contract with a horsemen's group at the time of enactment of this chapter which contains no provisions referring to interstate off-track betting, the terms and conditions of said then-existing contract shall be deemed to apply to the interstate off-track wagers and no additional written agreement need be entered into unless the parties to such then-existing contract agree otherwise. Where such provisions exist in such existing contract, such contract shall govern. Where written consents exist at the time of enactment of this chapter between an off-track betting system and the host racing association providing for interstate off-track wagers, or such written consents are executed by these parties prior to the expiration of such then-existing contract, upon the expiration of such then-existing contract the written agreement of such horsemen's group shall thereafter be required as such condition precedent and as a part of the regular contractual process, and may not be withdrawn or varied except in the regular contractual process. Where no such written consent exists, and where such written agreement occurs at a racing association which has a regular contractual process with such horsemen's group, said agreement by the horsemen's group may not be withdrawn or varied except in the regular contractual process;

(2) the host racing commission;

(3) the off-track racing commission.

(b) Approval of tracks as prerequisite to acceptance of wager; exceptions

(1) In addition to the requirement of subsection (a) of this section, any off-track betting office shall obtain the approval of—

(A) all currently operating tracks within 60 miles of such off-track betting office; and

(B) if there are no currently operating tracks within 60 miles then the closest currently operating track in an adjoining State.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, any off-track betting office in a State with at least 250 days of on-track parimutuel horseracing a year, may accept interstate off-track wagers for a total of 60 racing days and 25 special events a year without the approval required by paragraph (1), if with respect to such 60 racing days, there is no racing of the same type at the same time of day being conducted within the off-track betting State within 60 miles of the off-track betting office accepting the wager, or such racing program cannot be completed. Excluded from such 60 days and from the consent required by subsection (b)(1) of this section may be dark days which occur during a regularly scheduled race meeting in said off-track betting State. In order to accept any interstate off-track wager under the terms of the preceding sentence the off-track betting office shall make identical offers to any racing association described in subparagraph (A) of subsection (b)(1) of this section. Nothing in this subparagraph shall be construed to reduce or eliminate the necessity of obtaining all the approvals required by subsection (a) of this section.

(c) Takeout amount

No parimutuel off-track betting system may employ a takeout for an interstate wager which is greater than the takeout for corresponding wagering pools of off-track wagers on races run within the off-track State except where such greater takeout is authorized by State law in the off-track State.

(Pub. L. 95-515, § 5, Oct. 25, 1978, 92 Stat. 1813.)

§ 3005. Liability and damages

Any person accepting any interstate off-track wager in violation of this chapter shall be civilly liable for damages to the host State, the host racing association and the horsemen's group. Damages for each violation shall be based on the total of off-track wagers as follows:

(1) If the interstate off-track wager was of a type accepted at the host racing association, damages shall be in an amount equal to that portion of the takeout which would have been distributed to the host State, host racing association and the horsemen's group, as if each such interstate off-track wager had been placed at the host racing association.

(2) If such interstate off-track wager was of a type not accepted at the host racing association, the amount of damages shall be determined at the rate of takeout prevailing at the off-track betting system for that type of wager and shall be distributed according to the same formulas as in paragraph (1) above.

(Pub. L. 95-515, § 6, Oct. 25, 1978, 92 Stat. 1814.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3006 of this title.

§ 3006. Civil action

(a) Parties; remedies

The host State, the host racing association, or the horsemen's group may commence a civil action against any person alleged to be in violation of this chapter, for injunctive relief to restrain violations and for damages in accordance with section 3005 of this title.

(b) Intervention

In any civil action under this section, the host State, the host racing association and horsemen's group, if not a party, shall be permitted to intervene as a matter of right.

(c) Limitations

A civil action may not be commenced pursuant to this section more than 3 years after the discovery of the alleged violation upon which such civil action is based.

(d) State as defendant

Nothing in this chapter shall be construed to permit a State to be sued under this section other than in accordance with its applicable laws.

(Pub. L. 95-515, § 7, Oct. 25, 1978, 92 Stat. 1814.)

§ 3007. Jurisdiction and venue

(a) District court jurisdiction

Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any civil action under this chapter, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue; service of process

A civil action under this chapter may be brought in any district court of the United States for a district located in the host State or the off-track State, and all process in any such civil action may be served in any judicial district of the United States.

(c) Concurrent state court jurisdiction

The jurisdiction of the district courts of the United States pursuant to this section shall be concurrent with that of any State court of competent jurisdiction located in the host State or the off-track State.

(Pub. L. 95-515, § 8, Oct. 25, 1978, 92 Stat. 1814.)

CHAPTER 58—FULL EMPLOYMENT AND BALANCED GROWTH [NEW]

Sec.

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1021, 1022, 1022b, 1022c, 1022d, 1022f, 1023 of this title; title 12 section 225a.

§ 3101. Congressional findings

(a) The Congress finds that the Nation has suffered substantial unemployment and underemployment, idleness of other productive resources, high rates of inflation, and inadequate productivity growth, over prolonged periods of time, imposing numerous economic and social costs on the Nation. Such costs include the following:

(1) The Nation is deprived of the full supply of goods and services, the full utilization of labor and capital resources, and the related increases in economic well-being that would occur under conditions of genuine full employment, production, and real income, balanced growth, a balanced Federal budget, and the effective control of inflation.

(2) The output of goods and services is insufficient to meet pressing national priorities.

(3) Workers are deprived of the job security, income, skill development, and productivity necessary to maintain and advance their standards of living.

(4) Business and industry are deprived of the production, sales, capital flow, and productivity necessary to maintain adequate profits, undertake new investment, create jobs, compete internationally, and contribute to meeting society's economic needs. These problems are especially acute for smaller businesses. Variations in the business cycle and low-level operations of the economy are far more damaging to smaller businesses than to larger business concerns because smaller businesses have fewer available resources, and less access to resources, to withstand nationwide economic adversity. A decline in small business enterprises contributes to unemployment by reducing employment opportunities and contributes to inflation by reducing competition.

(5) Unemployment exposes many families to social, psychological, and physiological costs, including disruption of family life, loss of individual dignity and self-respect, and the aggravation of physical and psychological illnesses, alcoholism and drug abuse, crime, and social conflicts.

(6) Federal, State, and local government budgets are undermined by deficits due to shortfalls in tax revenues and in increases in expenditures for unemployment compensation, public assistance, and other recession-related services in the areas of criminal justice, alcoholism and drug abuse, and physical and mental health.

(b) The Congress further finds that:

(1) High unemployment may contribute to inflation by diminishing labor training and skills, underutilizing capital resources, reducing the rate of productivity advance, increasing unit labor costs, and reducing the general supply of goods and services.

(2) Aggregate monetary and fiscal policies alone have been unable to achieve full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance, and reasonable price stability, and therefore must be supplemented by other measures designed to serve these ends.

(3) Attainment of these objectives should be facilitated by setting explicit short-term and medium-term economic goals, and by improved coordination among the President, the Congress, and the Board of Governors of the Federal Reserve System.

(4) Increasing job opportunities and full employment would greatly contribute to the elimination of discrimination based upon sex, age, race, color, religion, national origin, handicap, or other improper factors.

(c) The Congress further finds that an effective policy to promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance, and reasonable price stability should (1) be based on the development of explicit economic goals and policies involving the President, the Congress, and the Board of Governors of the Federal Reserve System, with maximum reliance on the resources and ingenuity of the private sector of the economy, (2) include programs specifically designed to reduce high unemployment due to recessions, and to reduce structural unemployment within region-

al areas and among particular labor force groups, and (3) give proper attention to the role of increased exports and improvement in the international competitiveness of agriculture, business, and industry in providing productive employment opportunities and achieving an improved trade balance.

(d) The Congress further finds that full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability are important national requirements and will promote the economic security and well-being of all citizens of the Nation.

(e) The Congress further finds that the United States is part of an interdependent world trading and monetary system and that attainment of the requirements specified in subsection (d) of this section is dependent upon policies promoting a free and fair international trading system and a sound and stable international monetary system.

(Pub. L. 95-523, § 2, Oct. 27, 1978, 92 Stat. 1888.)

SHORT TITLE

Section 1 of Pub. L. 95-523 provided in part that this Act [which enacted this chapter and sections 1022a to 1022f of this title, amended sections 1021, 1022, 1023, and 1024 of this title, section 225a of Title 12, Banks and Banking, and sections 1322 and 1326 of Title 31, Money and Finance, and enacted provisions set out as notes under section 1021 of title and section 225a of Title 12] may be cited as the "Full Employment and Balanced Growth Act of 1978".

§ 3102. Report to congressional committees.

Not later than one year after October 27, 1978, the Committee on Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives each shall conduct a study and submit a report, including findings and recommendations, to the Committee on Rules and Administration of the Senate and the Committee on Rules of the House, respectively, on the subject of establishing a full employment goal in connection with the provisions of this chapter.

(Pub. L. 95-523, § 3, Oct. 27, 1978, 92 Stat. 1889.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, known as the Full Employment and Balanced Growth Act of 1978, which enacted this chapter and sections 1022a to 1022f of this title, amended sections 1021, 1022, and 1023 of this title, section 225a of Title 12, Banks and Banking, and sections 1322 and 1326 of Title 31, Money and Finance, and enacted provisions set out as notes under sections 1021 and 3101 of this title and section 225a of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

§ 3103. National Employment Conference

(a) A National Employment Conference may be convened in the District of Columbia within a reasonable period of time after October 27, 1978. Responsibility for the organization and implementation of this conference shall rest with the President or the appropriate department or agency of the Federal Government, and the conference shall bring together leaders of small and larger business, labor, government, and all other interested parties.

(b) The subject of the conference shall be employment, with particular attention to structural unemployment and the plight of disadvantaged youth. The conference shall also focus on issues such as implementation of adequate and effective incentives for private sector employers to hire the hard-core unemployed. Special attention shall be given to the creation of jobs through the use of targeted employment tax credits, wage vouchers, and other incentives to private sector businesses.

(Pub. L. 95-523, § 4, Oct. 27, 1978, 92 Stat. 1889.)

SUBCHAPTER I—STRUCTURAL ECONOMIC POLICIES AND PROGRAMS INCLUDING TREATMENT OF RESOURCE RESTRAINTS

§ 3111. Congressional statement of purpose

The Congress recognizes that general economic policies alone have been unable to achieve the goals set forth in this chapter related to full employment, production, and real income, balanced growth, adequate growth in productivity, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and achievement of reasonable price stability as provided for in section 1022b(b) of this title. It is, therefore, the purpose of this subchapter to require the President to initiate, as the President deems appropriate, with recommendations to the Congress where necessary, supplementary programs and policies to the extent that the President finds such action necessary to help achieve these goals, including the goals and timetable for the reduction of unemployment. Insofar as feasible without undue delay, any policies and programs so recommended shall be included in the Economic Report.

(Pub. L. 95-523, title II, § 201, Oct. 27, 1978, 92 Stat. 1899.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3112, 3114 of this title.

§ 3112. Countercyclical employment policies

(a) Any countercyclical efforts undertaken to aid in achieving the purposes of section 3111 of this title shall consider for inclusion the following programmatic entities:

(1) accelerated public works, including the development of standby public works projects;

(2) public service employment;
(3) State and local grant programs;
(4) the levels and duration of unemployment insurance;
(5) skill traning in both the private and public sectors, both as a general remedy and as a supplement to unemployment insurance;
(6) youth employment programs as specified in section 3115 of this title;
(7) community development programs to provide employment in activities of value to the States, local communities (including rural areas), and the Nation;
(8) Federal procurement programs which are targeted on labor surplus areas; and
(9) augmentation of other employment and training programs which would help to reduce high levels of unemployment arising from cyclical causes.

(b) In any countercyclical efforts undertaken, the President shall consider a triggering mechanism which will implement the program during a period of rising unemployment and phase out the program when unemployment is appropriately reduced, and incorporate effective means to facilitate individuals assisted under programs developed pursuant to this section to return promptly to regular private and public employment as the economy recovers.

(Pub. L. 95-523, title II, § 202, Oct. 27, 1978, 92 Stat. 1900.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3113, 3116 of this title.

§ 3113. Economic activity coordination

(a) As an integral part of any countercyclical employment policies undertaken in accord with section 3112 of this title, the President shall, to the extent the President deems necessary, set forth programs and policies, including recommended legislation where needed, to coordinate economic action among the Federal Government, regions, States and localities, and the private sector to promote achievement of the purposes of this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.] and an economic environment in which State and local governments and private sector economic activity and employment will prosper. In considering programs and policies related to the private sector, full consideration shall be given to promoting the growth and well-being of small businesses and employment training programs through private sector incentives.

(b) In any efforts under this section, the President shall endeavor to meet criteria that establish programs which are funded to take account of the fiscal needs and budget conditions of the respective States and localities and their own efforts, with special attention to the rates of unemployment in such States and localities.

(Pub. L. 95-523, title II, § 203, Oct. 27, 1978, 92 Stat. 1900.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsec. (a), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§ 1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

§ 3114. Regional and structural employment policies and programs

(a) To the extent deemed appropriate by the President in fulfillment of the purposes of section 3111 of this title, the President shall recommend legislation to the Congress if necessary, regional and structural employment policies and programs.

(b) In formulating the regional components of any such programs, the President shall encourage to the extent the President deems necessary, new private sector production and employment to locate within depressed localities and regions with substantial unemployment and to aid in stabilizing their economic base. To the extent feasible, such policies and programs shall foster the establishment and growth of smaller businesses in such localities and regions. Any regional employment proposal of the President shall also include an analysis of the extent to which Federal tax, expenditure (including procurement of goods and services), defense, transportation, energy, natural resources and employment policies have influenced the movement of people, jobs, and small and larger business and industries from chronic high unemployment regions and areas, and proposals designed to correct Federal policies that have an adverse economic impact upon such regions and areas.

(Pub. L. 95-523, title II, § 204, Oct. 27, 1978, 92 Stat. 1901.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3116 of this title.

§ 3115. Youth employment policies and programs

(a) The Congress finds and declares—
(1) That serious unemployment and economic disadvantage of a unique nature exist among youths even under generally favorable economic conditions;
(2) that this group constitutes a substantial portion of the Nation's unemployment, and that this significantly contributes to crime, alcoholism and drug abuse, and other social and economic problems; and
(3) that many youths have special employment needs and problems which, if not promptly addressed, will substantially contribute to more severe unemployment problems in the long run.

(b) To the extent deemed necessary in fulfillment of the purposes of this chapter, the President shall improve and expand existing youth employment programs, recommending legislation where required. In formulating any such program, the President shall—
(1) include provisions designed to fully coordinate youth employment activities with other employment and training programs;
(2) develop a smoother transition from school to work;

(3) prepare disadvantaged and other youths with employability handicaps for regular self-sustaining employment;

(4) develop realistic methods for combining training with work; and

(5) develop provisions designed to attract structurally unemployed youth into productive full-time employment through incentives to private and independent sector businesses;[1]

(Pub. L. 95-523, title II, § 205, Oct. 27, 1978, 92 Stat. 1901.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section 3102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3112, 3116 of this title.

§ 3116. Job training, counseling and reservoirs of employment projects

(a) Policies, procedures and recommendations

Further to promote achievement of full employment under this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.], the President, through the Secretary of Labor, shall develop policies and procedures and, as necessary, recommend programs for providing employment opportunities to individuals aged 16 and over in the civilian labor force who are able, willing, and seeking to work but who, despite serious efforts to obtain employment, remain unemployed.

(b) Utilization of authority under CETA

In meeting the responsibilities under subsection (a) of this section, the Secretary of Labor shall, as appropriate, fully utilize the authority provided under CETA and other relevant provisions of law to—

(1) assure the availability of counseling, training, and other support activities necessary to prepare persons willing and seeking work for employment (including use of section 110 of CETA when necessary);

(2) refer persons able, willing, and seeking to work to job opportunities in the private and public sectors through the existing public employment placement facilities and through the United States Employment Service of the Department of Labor, including job opportunities in any positions created under programs established pursuant to sections 3112, 3114, and 3115 of this title; and

(3) encourage flexi-time and part-time jobs for persons who are able, willing, and seeking employment but who are unable to work a standard workweek.

(c) Establishment of project reservoirs; restrictions and requirements of new programs

(1) To the extent that individuals aged sixteen and over and able, willing, and seeking to work are not and in the judgment of the President cannot be provided with private job opportunities or job opportunities under other programs and actions in existence, in accord with the goals and timetables set forth in the Employment Act of 1946 [15 U.S.C. 1021 et seq.], the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of CETA and other existing employment and training projects or through such new programs as are determined necessary by the President or through both such projects and such programs.

(2) New programs as may be authorized by law after October 27, 1978, referred to in paragraph (c)(1)—

(A) shall not be put into operation earlier than two years after October 27, 1978, nor without a finding by the President, transmitted to the Congress, that other means of employment are not yielding enough jobs to be consistent with attainment of the goals and timetables for the reduction of unemployment set forth in the Employment Act of 1946 [15 U.S.C. 1021 et seq.],

(B) shall be designed so that no workers from private employment are drawn into the reservoir projects thereunder;

(C) shall be useful and productive jobs;

(D) shall be mainly in the lower ranges of skills and pay, and toward this end the number of reservoir jobs under such new programs shall, to the extent practicable, be maximized in relationship to the appropriations provided for such jobs;

(E) shall be targeted on areas of high unemployment and on individuals who are structurally unemployed;

(F) shall be phased in by the President as necessary, in conjunction with the employment goals under sections 3(a)(2) [15 U.S.C. 1022(a)(2)] and 4(b) [15 U.S.C. 1022a(b)] of the Employment Act of 1946.

(d) Regulations

The Secretary, in carrying out the provisions of this section, shall establish regulations providing for—

(1) an initial determination of the job seeker's ability to be employed at certain types and duration of work, so that such individual may be appropriately referred to jobs, training, counseling, and other supportive services;

(2) compliance with the nondiscrimination provisions of this chapter in accordance with section 3151 of this title;

(3) appropriate eligibility criteria to determine the order of priority of access of any person to any new programs under subsection (c) of this section as may be authorized by law including but not necessarily limited to (A) household income, duration of unemployment (not less than five weeks), and the number of people economically dependent upon such person; and (B) denial of access to any person refusing to accept or hold a job except for good cause, as determined by the Secretary of Labor, including refusal to accept or hold a job subject to reference under subsection (b) paragraph (2) of this section, in order to seek a reservoir project job under subsection (c) of this section; and

(4) such administrative appeal procedures as may be appropriate to review the initial determination of the abilities of persons willing,

[1] So in original. Probably should be a period.

able, and seeking to work under paragraph (1) of this subsection and the employment need and eligibility under paragraph (3) of this subsection.

(Pub. L. 95-523, title II, § 206, Oct. 27, 1978, 92 Stat. 1902.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) and (d)(2), see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsecs. (a) and (c), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§ 1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

CETA referred to in subsecs. (b) and (c)(1), means the Comprehensive Employment and Training Act of 1973, Pub. L. 92-203, Dec. 28, 1973, 87 Stat. 839, as amended, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

Section 110 of CETA, referred to in subsec. (b)(1), means Pub. L. 93-203, title I, § 110, Dec. 28, 1973, 87 Stat. 848, formerly classified to section 820 of Title 29, Labor, which was omitted from the Code pursuant to the general revision of the Comprehensive Employment and Training Act of 1973 by Pub. L. 95-524, Oct. 27, 1978, 92 Stat. 1909, and is now covered by section 812 of Title 29.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 3152 of this title.

§ 3117. Capital formation

(a) Congressional findings

The Congress finds that—

(1) promotion of full employment and balanced growth is in itself a principal avenue to high and sustained rates of capital formation;

(2) high rates of capital formation are necessary to ensure adequate rates of capacity expansion and productivity growth, compliance with governmental health, safety and environmental standards, and the replacement of obsolete production equipment;

(3) the ability of our economy to compete successfully in international markets, the development of new technology, improved working conditions, expanding job opportunities, and an increasing standard of living depend on the availability of adequate capital at reasonable cost to commerce and industry;

(4) an important goal of national policy shall be to remove obstacles to the free flow of resources into new investment, particularly those obstacles that hinder the creation and growth of smaller businesses because general national programs and policies to aid and stimulate private enterprise are not sufficient to deal with the special problems and needs of smaller businesses; and

(5) while private business firms are, and should continue to be, the major source of investment, the investment activities of the Federal, State, and local governments play an important role in affecting the level of output, employment, and productivity and in achieving other national purposes.

(b) Investment Policy Report; recommendations in President's Budget; referral to Joint Economic Committee

The Economic Report shall include an Investment Policy Report which shall, as appropriate, (1) review and assess existing Federal Government programs and policies which affect business investment decisions, including, but not limited to, the relevant aspects of the tax code, Federal expenditure policy, Federal regulatory policy, international trade policy, and Federal support for research, development, and diffusion of new technologies; (2) provide an assessment of the levels of investment capital available, required by, and applied to small, medium and large business entities; (3) provide an analysis of current foreseeable trends in the level of investment capital available to such entities; and (4) provide a description of programs and proposals for carrying out the policy set forth in section 1021(i) of this title. In addition, the Economic Report shall include an assessment of the effect of the overall economic policy environment and the rate of inflation on business investment. The President shall recommend in the President's Budget, as appropriate, new programs or modifications to improve existing programs concerned with private capital formation. The President shall also transmit to the Congress as part of the President's Budget such other recommendations as the President may deem necessary or desirable to achieve the policy as set forth in section 1021(i) of this title. The Investment Policy Report, when transmitted to the Congress, shall be referred to the Joint Economic Committee.

(c) Review in Economic Report of Federal policies and programs which affect public investments; recommendations respecting new policies or programs

The Economic Report referred to in subsection (b) of this section shall review and assess Federal policies and programs which directly, or through grants-in-aid to State and local governments, or indirectly through other means, affect the adequacy, composition and effectiveness of public investments, as a means of achieving the goals of this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.]. The President shall recommend, as appropriate, new programs and policies or modifications to improve existing Federal programs affecting public investment.

(Pub. L. 95-523, title II, § 207, Oct. 27, 1978, 92 Stat. 1903.)

REFERENCES IN TEXT

The tax code, referred to in subsec. (b)(1), means Title 26, Internal Revenue Code.

Section 1021(i) of this title, referred to in subsec. (b), in the original read "section 102(i)" probably meaning section 102 of Pub. L. 95-523 which amended section 2 of the Employment Act of 1946, classified to section 1021 of this title. Subsec. (i) of section 1021 of this title sets out the congressional declaration of policy for private enterprise investments.

For definition of "this chapter", referred to in subsec. (c), see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsec. (c), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§ 1021 et

seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

SUBCHAPTER II—POLICIES AND PROCEDURES FOR CONGRESSIONAL REVIEW

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1022a of this title.

§ 3131. Congressional statement of purpose

(a) The purposes of this subchapter are to establish procedures for congressional review and action with respect to the Economic Report of the President (hereafter in this subchapter referred to as the "Economic Report"), the report of the Board of Governors of the Federal Reserve System, and the other policies and provisions of this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.].

(b) The Congress shall initiate or develop such legislation as it deems necessary to implement proposals and objectives pursuant to this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.] after such modification in such proposals as it deems desirable. Nothing in this subchapter shall be construed to prevent the Congress or any of its committees from considering or initiating at any time legislative action in furtherance of the goals and purposes of this chapter.

(Pub. L. 95-523, title III, § 301, Oct. 27, 1978, 92 Stat. 1904.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title III of Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1904, which enacted this subchapter and amended sections 1322 and 1326 of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

For definition of "this chapter", referred to in text, see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsecs. (a) and (b), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§ 1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

§ 3132. Committee review

(a) Short-term and medium-term goals

In conjunction with its review of the Economic Report, and the holding of hearings on the Economic Report under the Employment Act of 1946 [15 U.S.C. 1021 et seq.], the Joint Economic Committee shall review and analyze the short-term and medium-term goals set forth in the Economic Report pursuant to section 3(a)(2) [15 U.S.C. 1022(a)(2)] and 4(b) [15 U.S.C. 1022a(b)] of the Employment Act of 1946.

(b) Hearings

The Joint Economic Committee shall hold hearings on the Economic Report for the purpose of receiving testimony from Members of the Congress, and such appropriate representatives of Federal departments and agencies, the general public, and interested groups as the joint committee deems advisable. The joint committee shall also consider the comments and views on the Economic Report which are received from State and local officials.

(c) Report of standing and joint committees and committees with legislative jurisdiction

Within thirty days after receipt by the Congress of the Economic Report, each standing committee of the Senate and the House of Representatives, each other committee of the Senate and the House of Representatives which has legislative jurisdiction, and each joint committee of the Congress may submit to the Joint Economic Committee, for use by the Joint Economic Committee in conducting its review and analysis under subsection (a) of this section, a report containing the views and recommendations of the submitting committee with respect to aspects of the Economic Report which relate to its jurisdiction.

(d) Report of Joint Economic Committee

On or before March 15 of each year, a majority of the members of the Joint Economic Committee shall submit a report to the Committees on the Budget of the Senate and the House of Representatives. Such report shall include findings, recommendations, and any appropriate analyses with respect and in direct comparison to each of the short-term and medium-term goals set forth in the Economic Report.

(Pub. L. 95-523, title III, § 302, Oct. 27, 1978, 92 Stat. 1904.)

REFERENCES IN TEXT

The Employment Act of 1946, referred to in subsec. (a), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§ 1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

§ 3133. Exercise of rulemaking powers

(a)[1] The Provisions of this subchapter and the amendments made by such provisions are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House), at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(Pub. L. 95-523, title III, § 305, Oct. 27, 1978, 92 Stat. 1907.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title III of Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1904, which enacted this subchapter and amended sections 1322 and 1326 of Title

[1] So in original. No subsec. (b) was enacted.

31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

SUBCHAPTER III—GENERAL PROVISIONS

§ 3151. Nondiscrimination

(a) Exclusion from participation or denial of benefits

No person in the United States shall on the ground of sex, age, race, color, religion, national origin or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded pursuant to the implementation of this chapter, including membership in any structure created by this chapter.

(b) Noncompliance notification; remedies of Secretary of Labor

Whenever the Secretary of Labor determines that a recipient of funds made available pursuant to this chapter has failed to comply with subsection (a) of this section, or an applicable regulation, the Secretary shall notify the recipient of the noncompliance and shall request such recipient to secure compliance. If within a reasonable period of time, not to exceed sixty days, the recipient fails or refuses to secure compliance, the Secretary of Labor may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or

(3) take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b) of this section, or whenever the Attorney General has reason to believe that a recipient is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in the appropriate United States district court for any and all appropriate relief.

(d) Enforcement analysis in Report of President

To assist and evaluate the enforcement of this section, and the broader equal employment opportunity policies of this chapter the Secretary of Labor shall include, in the annual Employment and Training Report of the President provided under section 705(a) of CETA, a detailed analysis of the extent to which the enforcement of this section achieves positive results in both the quantity and quality of jobs, and for employment opportunities generally.

(Pub. L. 95-523, title IV, § 401, Oct. 27, 1978, 92 Stat. 1907.)

References in Text

For definition of "this chapter", referred to in subsecs. (a), (b), and (d), see References in Text note set out under section 3102 of this title.

The Civil Rights Act of 1964, referred to in subsec. (b)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

Section 705(a) of CETA, referred to in subsec. (d), means Pub. L. 93-203, title VII, § 705(a), Dec. 28, 1973, 87 Stat. 879, formerly classified to section 985(a) of Title 29, Labor, which was omitted from the Code pursuant to the general revision of the Comprehensive Employment and Training Act of 1973 by Pub. L. 95-524, Oct. 27, 1978, 92 Stat. 1909, and is now covered by section 829 of Title 29.

Section Referred to in Other Sections

This section is referred to in section 3116 of this title.

§ 3152. Labor standards

(a) Equal wages; increase in employment

Any new program enacted and funded pursuant to the implementation of this chapter shall, subject to any limitations on maximum annual compensation as may be provided in the law authorizing such programs, provide that persons employed are paid equal wages for equal work, and that such policies and programs create a net increase in employment through work that would not otherwise be done or are essential to fulfill national priority purposes.

(b) Wage rates; work limitations of reservior projects employees

Any person employed in any reservior project enacted and funded pursuant to the implementation of section 3116(c)(1) of this title, or in any other job created pursuant to implementation of this chapter, shall, subject to any limitations on maximum annual compensation as may be provided in the law authorizing such programs, be paid not less than the pay received by others performing the same type of work for the same employer, and in no case less than the minimum wage under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.]. No person employed in any reservior project enacted and funded pursuant to implementation of section 3116(c)(1) of this title shall perform work of the type to which the Davis-Bacon Act (40 U.S.C. 276a—276a-5) applies, except as otherwise may be specifically authorized by law.

(c) Recommendations of President

Any recommendation by the President for legislation to implement any program enacted pursuant to the provisions of this chapter, requiring the use of funds under this chapter, and submitted pursuant to the requirements of this chapter, shall contain appropriate wage provisions based upon existing wage standard legislation.

(Pub. L. 95-523, title IV, § 402, Oct. 27, 1978, 92 Stat. 1908.)

References in Text

For definition of "this chapter", referred to in text, see References in Text note set out under section 3102 of this title.

The Fair Labor Standards Act, referred to in subsec. (b), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29, and Tables.

The Davis-Bacon Act (40 U.S.C. 276a—276a-5), referred to in subsec. (b), is act Mar. 3, 1931, ch. 411, 46

Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

CHAPTER 59—RETAIL POLICIES FOR NATURAL GAS UTILITIES [NEW]

Sec.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 6807.

§ 3201. Purposes; coverage

(a) Purposes

The purposes of this chapter are to encourage—

(1) conservation of energy supplied by gas utilities;

(2) the optimization of the efficiency of use of facilities and resources by gas utility systems; and

(3) equitable rates to gas consumers of natural gas.

(b) Volume of total retail sales

This chapter applies to each gas utility in any calendar year, and to each proceeding relating to each gas utility in such year, if the total sales of natural gas by such utility for purposes other than resale exceeded 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(c) Exclusion of wholesale sales

The requirements of this chapter do not apply to the operations of a gas utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of natural gas for purposes of resale.

(d) List of covered utilities

Before the beginning of each calendar year, the Secretary shall publish a list identifying each gas utility to which this chapter applies during such calendar year. Promptly after publication of such list, each State regulatory authority shall notify the Secretary of each gas utility on the list for which such State regulatory authority has ratemaking authority.

(Pub. L. 95-617, title III, § 301, Nov. 9, 1978, 92 Stat. 3149.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3205 of this title.

§ 3202. Definitions

For purposes of this chapter—

(1) The term "gas consumer" means any person, State agency, or Federal agency, to which natural gas is sold other than for purposes of resale.

(2) The term "gas utility" means any person, State agency, or Federal agency, engaged in the local distribution of natural gas, and the sale of natural gas to any ultimate consumer of natural gas.

(3) The term "State regulated gas utility" means any gas utility with respect to which a State regulatory authority has ratemaking authority.

(4) The term "nonregulated gas utility" means any gas utility other than a State regulated gas utility.

(5) The term "rate" means any (A) price, rate, charge, or classification made, demanded, observed, or received with respect to sale of natural gas to a gas consumer, (B) any rule, regulation, or practice respecting any such rate, charge, or classification, and (C) any contract pertaining to the sale of natural gas to a gas consumer.

(6) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(7) The term "sale" when used with respect to natural gas, includes an exchange of natural gas.

(8) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of natural gas by any gas utility (other than by such State agency).

(Pub. L. 95-617, title III, § 302, Nov. 9, 1978, 92 Stat. 3150.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 2603.

§ 3203. Adoption of certain standards

(a) Adoption of standards

Not later than 2 years after November 9, 1978, each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas utility shall provide public notice and conduct a hearing respecting the standards established by subsection (b) of this section, and, on the basis of such hearing, shall—

(1) adopt the standard established by subsection (b)(1) of this section, if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate

and is consistent with otherwise applicable State law, and

(2) adopt the standard established by subsection (b)(2) of this section, if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate to carry out the purposes of this chapter, is otherwise appropriate, and is consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) and (2) and any review of such determinantion in any court under section 3207 of this title, the purposes of this chapter supplement State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) Establishment

The following Federal standards are hereby established:

(1) Procedures for termination of natural gas service

No gas utility may terminate natural gas service to any gas consumer except pursuant to procedures described in section 3204(a) of this title.

(2) Advertising

No gas utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 3204(b) of this title.

(c) Procedural requirements

Each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas utility, within the 2-year period specified in subsection (a) of this section, shall adopt, pursuant to subsection (a) of this section, each of the standards established by subsection (b) of this section, or, with respect to any such standard which is not adopted, such authority or nonregulated gas utility shall state in writing that it has determined not to adopt such standard, together with the reasons for such determination. Such statement of reasons shall be available to the public.

(Pub. L. 95-617, title III, § 303, Nov. 9, 1978, 92 Stat. 3150.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3204 of this title.

§ 3204. Special rules for standards

(a) Procedures for termination of gas service

The procedures for termination of service referred to in section 3203(b)(1) of this title are procedures prescribed by the State regulatory authority (with respect to gas utilities for which it has ratemaking authority) or the nonregulated gas utility which provide that—

(1) no gas service to a gas consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to a gas consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to each gas utility for which it has ratemaking authority) or nonregulated gas utility, and such consumer establishes that—

(A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) he is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

(b) Advertising

(1) For purposes of this section and section 3203 of this title—

(A) The term "advertising" means the commercial use, by a gas utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's gas consumers.

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of a gas utility or the selection or installation of any appliance or equipment designed to use such utility's service.

(2) For purposes of this section and section 3203 of this title, the terms "political advertising" and "promotional advertising" do not include—

(A) advertising which informs natural gas consumers how they can conserve natural gas or can reduce peak demand for natural gas,

(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act [42 U.S.C. 8211 et seq.],

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notification of hearings thereon.

(Pub. L. 95-617, title III, § 304, Nov. 9, 1978, 92 Stat. 3151.)

REFERENCES IN TEXT

The National Energy Conservation Policy Act, referred to in subsec. (b)(2)(B), is Pub. L. 95-619, Nov. 9,

1978, 92 Stat. 3208. Part 1 of title II of the National Energy Conservation Policy Act is classified generally to part A (§ 8211 et seq.) of subchapter II of chapter 91 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3203 of this title.

§ 3205. Federal participation

(a) Intervention

In addition to the authorities vested in the Secretary pursuant to any other provision of law, the Secretary, on his own motion, may intervene as a matter of right in any proceeding before a State regulatory authority which relates to gas utility rates or rate design. Such intervention shall be solely for the purpose of advocating policies or methods which carry out the purposes set forth in section 3201 of this title.

(b) Rights

The Secretary shall have the same rights as any other party to a proceeding before a State regulatory authority which relates to gas utility rates or rate design.

(c) Nonregulated gas utilities

The Secretary, on his own motion, may, to the same extent as provided in subsections (a) through (b) of this section, intervene as a matter of right in any proceeding which relates to rates or rate design of nonregulated gas utilities.

(Pub. L. 95-617, title III, § 305, Nov. 9, 1978, 92 Stat. 3152.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3207 of this title.

§ 3206. Gas utility rate design proposals

(a) Study

(1) the Secretary, in consultation with the Commission and, after affording an opportunity for consultation and comment by representatives of the State regulatory commissions, gas utilities, and gas consumers, shall study and report to Congress on gas utility rate design within 18 months after November 9, 1978. Such study shall address the effect (both separately and in combination) of the following factors upon the items listed in paragraph (2): incremental pricing; marginal cost pricing; end user gas consumption taxes; wellhead natural gas pricing policies; demand-commodity rate design; declining block rates; interruptible service; seasonal rate differentials; and end user rate schedules.

(2) The items referred to in paragraph (1) are as follows:

(A) natural gas pipeline and local distribution company load factors;

(B) rates to each class of user, including residential, commercial, and industrial users;

(C) the change in total costs resulting from gas utility designs (including capital and operating costs) to gas consumers or classes thereof;

(D) demand for, and consumption of, natural gas;

(E) end use profiles of natural gas pipelines and local distribution companies; and

(F) competition with alternative fuels.

(b) Proposals

Based upon the study prepared pursuant to subsection (a) of this section, the Secretary shall develop proposals to improve gas utility rate design and to encourage conservation of natural gas. Such proposals shall include any comments and recommendations of the Commission.

(c) Transmission to Congress

The proposals prepared under subsection (b) of this section, shall be transmitted, together with any legislative recommendations, to each House of Congress not later than 6 months after the date of submission of the study under subsection (a) of this section. Such proposals shall be accompanied by an analyses[1] of—

(1) the projected savings (if any) in consumption of natural gas, and other energy resources,

(2) changes (if any) in the cost of natural gas to consumers, which are likely to result from the implementation nationally of each of such proposals, and

(3) the effects of the proposals on other provisions of this Act on gas utility rate structures.

(d) Public participation

The Secretary shall provide for public participation in the conduct of the study under subsection (a) of this section, and the preparation of proposals under subsection (b) of this section.

(Pub. L. 95-617, title III, § 306, Nov. 9, 1978, 92 Stat. 3152.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(3), is Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3117, known as the Public Utility Regulatory Policies Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

§ 3207. Judicial review and enforcement

(a) Limitation of Federal jurisdiction

(1) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction over any action arising under any provision of this chapter except for—

(A) an action over which a court of the United States has jurisdiction under paragraph (2), or

(B) review in the Supreme Court of the United States in accordance with sections 1257 and 1258 of title 28.

(2) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under section 3205 of this title, and such court shall have jurisdiction to grant appropriate relief.

(b) Enforcement

(1) Any person may bring an action to enforce the requirements of this chapter in the appro-

[1] So in original. Probably should be "analysis".

priate State court. Such action in a State court shall be pursuant to applicable State procedures.

(2) Nothing in this chapter shall authorize the Secretary to appeal or otherwise seek judicial review of the decisions of a State regulatory authority or nonregulated gas utility or to become a party to any action to obtain such review or appeal. The Secretary may participate as an amicus curiae in any judicial review of an action arising under the provisions of this chapter.

(Pub. L. 95-617, title III, § 307, Nov. 9, 1978, 92 Stat. 3153.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3203 of this title.

§ 3208. Relationship to other applicable law

Nothing in this chapter prohibits any State regulatory authority or nonregulated gas utility from adopting, pursuant to State law, any standard or rule affecting gas utilities which is different from any standard established by this chapter.

(Pub. L. 95-617, title III, § 308, Nov. 9, 1978, 92 Stat. 3153.)

§ 3209. Reports respecting standards

(a) State authorities and nonregulated utilities

Not later than 1 year after November 9, 1978, and annually thereafter for 10 years, each State regulatory authority (with respect to each gas utility for which it has ratemaking authority), and each nonregulated gas utility, shall report to the Secretary, in such manner as the Secretary shall prescribe, respecting its consideration of the standards established by this chapter. Such report shall include a summary of the determinations made and actions taken with respect to each of such standards on a utility-by-utility basis.

(b) Secretary

Not later than 18 months after November 9, 1978, and annually thereafter for 10 years, the Secretary shall submit a report to the President and the Congress containing—

(1) a summary of the reports submitted under subsection (a) of this section,

(2) his analysis of such reports, and

(3) his actions under this chapter, and his recommendations for such further Federal actions, including any legislation, regarding retail gas utility rates (and other practices) as may be necessary to carry out the purposes of this chapter.

(Pub. L. 95-617, title III, § 309, Nov. 9, 1978, 92 Stat. 3153.)

§ 3210. Prior and pending proceedings

For purposes of this chapter, proceedings commenced by any State regulatory authority (with respect to gas utilities for which it has ratemaking authority) and any nonregulated gas utility before November 9, 1978, and actions taken before such date in such proceedings shall be treated as complying with the requirements of this chapter if such proceedings and actions substantially conform to such requirements. For purposes of this chapter, any such proceeding or action commenced before November 9, 1978, but not completed before such date shall comply with the requirements of this chapter, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date.

(Pub. L. 95-617, title III, § 310, Nov. 9, 1978, 92 Stat. 3154.)

§ 3211. Relationship to other authority

Nothing in this chapter shall be construed to limit or affect any authority of the Secretary or the Commission under any other provision of law.

(Pub. L. 95-617, title III, § 311, Nov. 9, 1978, 92 Stat. 3154.)

CHAPTER 60—NATURAL GAS POLICY [NEW]

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 717x, 717y of this title; title 42 section 7255.

§ 3301. Definitions

For purposes of this chapter—

(1) Natural gas

The term "natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(2) Well

The term "well" means any well for the discovery or production of natural gas, crude oil, or both.

(3) New well

The term "new well" means any well—

(A) the surface drilling of which began on or after February 19, 1977; or

(B) the depth of which was increased, by means of drilling on or after February 19, 1977, to a completion location which is located at least 1,000 feet below the depth of the deepest completion location of such well attained before February 19, 1977.

(4) Old well

The term "old well" means any well other than a new well.

(5) Marker well

(A) General rule

The term "marker well" means any well from which natural gas was produced in commercial quantities at any time after January 1, 1970, and before April 20, 1977.

(B) New wells

The term "marker well" does not include any new well under paragraph (3)(A) but includes any new well under paragraph (3)(B) if such well qualifies as a marker well under subparagraph (A) of this paragraph.

(6) Reservoir

The term "reservoir" means any producible natural accumulation of natural gas, crude oil, or both, confined—

(A) by impermeable rock or water barriers and characterized by a single natural pressure system; or

(B) by lithologic or structural barriers which prevent pressure communication.

(7) Completion location

(A) General rule

The term "completion location" means any subsurface location from which natural gas is being or has been produced in commercial quantities.

(B) Marker well

The term "completion location", when used with reference to any marker well, means any subsurface location from which natural gas was produced from such well in commercial quantities after January 1, 1970, and before April 20, 1977.

(8) Proration unit

The term "proration unit" means—

(A) any portion of a reservoir, as designated by the State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, which will be effectively and efficiently drained by a single well;

(B) any drilling unit, production unit, or comparable arrangement, designated or recognized by the State or Federal agency having jurisdiction with respect to production from the reservoir, to describe that portion of such reservoir which will be effectively and efficiently drained by a single well; or

(C) if such portion of a reservoir, unit, or comparable arrangement is not specifically provided for by State law or by any action of any State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, any voluntary unit agreement or other comparable arrangement applied, under local custom or practice within the locale in which such reservoir is situated, for the purpose of describing the portion of a reservoir which may be effectively and efficiently drained by a single well.

(9) New lease

The term "new lease", when used with respect to the Outer Continental Shelf, means a lease, entered into on or after April 20, 1977, of submerged acreage.

(10) Old lease

The term "old lease", when used with respect to the Outer Continental Shelf, means any lease other than a new lease.

(11) New contract

The term "new contract" means any contract, entered into on or after November 9, 1978, for the first sale of natural gas which was not previously subject to an existing contract.

(12) Rollover contract

The term "rollover contract" means any contract, entered into on or after November 9, 1978, for the first sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after November 9, 1978, specified by the provisions of such existing contract, as such contract was in effect on November 9, 1978, whether or not there is an identity of parties or terms with those of such existing contract.

(13) Existing contract

The term "existing contract" means any contract for the first sale of natural gas in effect on November 8, 1978.

(14) Successor to an existing contract

The term "successor to an existing contract" means any contract, other than a rollover contract, entered into on or after November 9, 1978, for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract.

(15) Interstate pipeline

The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.].

(16) Intrastate pipeline

The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act [15 U.S.C. 717(c)]).

(17) Local distribution company

The term "local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(18) Committed or dedicated to interstate commerce

(A) General rule

The term "committed or dedicated to interstate commerce", when used with respect to natural gas, means—

(i) natural gas which is from the Outer Continental Shelf; and

(ii) natural gas which, if sold, would be required to be sold in interstate commerce (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.]) under the terms of any contract, any certificate under the Natural Gas Act, or any provision of such Act.

(B) Exclusion

Such term does not apply with respect to—

(i) natural gas sold in interstate commerce (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.])—

(I) under section 6 of the Emergency Natural Gas Act of 1977;

(II) under any limited term certificate, granted pursuant to section 7 of the Natural Gas Act [15 U.S.C. 717f], which contains a pregrant of abandonment of service for such natural gas;

(III) under any emergency regulation under the second proviso of section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)]; or

(IV) to the user by the producer and transported under any certificate, granted pursuant to section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)], if such certificate was specifically granted for the transportation of that natural gas for such user;

(ii) natural gas for which abandonment of service was granted before November 9, 1978, under section 7 of the Natural Gas Act [15 U.S.C. 717f]; and

(iii) natural gas which, but for this clause, would be committed or dedicated

to interstate commerce under subparagraph (A)(ii) by reason of the action of any person (including any successor in interest thereof, other than by means of any reversion of a leasehold interest), if on May 31, 1978—

(I) neither that person, nor any affiliate thereof, had any right to explore for, develop, produce, or sell such natural gas; and

(II) such natural gas was not being sold in interstate commerce (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.]) for resale (other than any sale described in clause (i)(I), (II), or (III)).

(19) Certificated natural gas

The term "certificated natural gas" means natural gas transported by any interstate pipeline in a facility for which there is in effect a certificate issued under section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)]. Such term does not include natural gas sold to the user by the producer and transported pursuant to a certificate which is specifically issued under section 7(c) of the Natural Gas Act for the transportation of that natural gas, for such user unless such natural gas is used for the generation of electricity.

(20) Sale

The term "sale" means any sale, exchange, or other transfer for value.

(21) First sale

(A) General rule

The term "first sale" means any sale of any volume of natural gas—

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;

(iii) to any person for use by such person;

(iv) which precedes any sale described in clauses (i), (ii), or (iii); and

(v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this chapter.

(B) Certain sales not included

Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not included the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.

(22) Deliver

The term "deliver", when used with respect to any first sale of natural gas, means the physical delivery from the seller; except that in the case of the sale of proven reserves in place to any interstate pipeline, any intrastate pipeline, any local distribution company, or any user of such natural gas, such term means the transfer of title to such reserves.

(23) Certificate

The term "certificate", when used with respect to the Natural Gas Act [15 U.S.C. 717 et seq.], means a certificate of public convenience and necessity issued under such Act.

(24) Commission

The term "Commission" means the Federal Energy Regulatory Commission.

(25) Federal agency

The term "Federal agency" has the same meaning as given such term in section 105 of title 5.

(26) Person

The term "person" includes the United States, any State, and any political subdivision, agency, or instrumentality of the foregoing.

(27) Affiliate

The term "affiliate", when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person.

(28) Electric utility

The term "electric utility" means any person to the extent such person is engaged in the business of the generation of electricity and sale, directly or indirectly, of electricity to the public.

(29) Mcf

The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

(30) Btu

The term "Btu" means British thermal unit.

(31) Month

The term "month" means a calendar month.

(32) Mile

The term "mile" means a statute mile of 5,280 feet.

(33) United States

The term "United States" means the several States and includes the Outer Continental Shelf.

(34) State

The term "State" means each of the several States and the District of Columbia.

(35) Outer Continental Shelf

The term "Outer Continental Shelf" has the same meaning as such term has under section 1331(a) of title 43.

(36) Prudhoe Bay Unit of Alaska

The term "Prudhoe Bay Unit of Alaska" means the geographic area subject to the voluntary unit agreement approved by the Commissioner of the Department of Natural Resources of the State of Alaska on June 2, 1977, and referred to as the "affected area" in Conservation Order No. 145 of the Alaska Oil and Gas Conservation Committee, Division of Oil and Gas Conservation, Department of Natural Resources of the State of Alaska, as

such order was in effect on June 1, 1977, and determined without regard to any adjustments in the description of the affected area permitted to be made under such order.

(37) Antitrust laws

The term "Federal antitrust laws" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 13, 14–19, 20, 21, 22–27), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), section 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8–9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(Pub. L. 95–621, § 2, Nov. 9, 1978, 92 Stat. 3352.)

REFERENCES IN TEXT

The Natural Gas Act, and such Act referred to in pars. (15), (16), (18)(A)(ii), (B)(i), (iii)(II), (23), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

Section 6 of the Emergency Natural Gas Act of 1977, referred to in par. (18)(B)(i)(I), is Pub. L. 95–2, § 6, Feb. 2, 1977, 91 Stat. 7, which is set out in a note under section 717 of this title.

The Sherman Act (15 U.S.C. 1 et seq.), referred to in par. (37), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Clayton Act (15 U.S.C. 12, 13, 14–19, 20, 21, 22–27), referred to in par. (37), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in par. (37), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Act of June 19, 1936, chapter 592, referred to in par. (37), means act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

SHORT TITLE

Section 1 of Pub. L. 95–621 provided that: "This Act [enacting this chapter and amending section 7255 of Title 42, The Public Health and Welfare] may be cited as the 'Natural Gas Policy Act of 1978'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3312, 3363, 3375 of this title.

SUBCHAPTER I—WELLHEAD PRICING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3343, 3372, 3413, 3431, 3432 of this title.

PART A—WELLHEAD PRICE CONTROLS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3331, 3332 of this title.

§ 3311. Inflation adjustment; other general price ceiling rules

(a) Annual inflation adjustment factor

(1) General rule

For purposes of this subchapter, the annual inflation adjustment factor applicable for any month shall be the sum of—

(A) a factor equal to one hundredth of the quarterly percent change in the GNP implicit price deflator; plus

(B) a correction factor of 1.002.

(2) Quarterly percent change in the GNP implicit price deflator

For purposes of paragraph (1)—

(A) In general

The term "quarterly percent change in the GNP implicit price deflator", when used with respect to any month, means the quarterly percent change in the GNP implicit price deflator, computed and published as an annual rate by the Department of Commerce, for the most recent calendar quarter for which such quarterly percent change has been so published at least 8 days before the beginning of such month.

(B) Months before enactment

For purposes of applying such term with respect to any month in any calendar quarter which ends before November 9, 1978, and for which a quarterly percent change in the GNP implicit price deflator has been published by the Department of Commerce as of November 9, 1978, the quarterly percent change in the GNP implicit price deflator for the calendar quarter in which such month occurs shall be used in lieu of the quarterly percent change in the GNP implicit price deflator for a preceding calendar quarter.

(3) GNP implicit price deflator

For purposes of paragraph (2)—

(A) In general

The term "GNP implicit price deflator" means, except as provided in subparagraph (B), the preliminary estimate of the implicit price deflator, seasonally adjusted, for the gross national product, as computed and published by the Department of Commerce for the calendar quarter involved.

(B) Most recent data available on November 9, 1978

The most recent revision, if any, of such implicit price deflator which has been so published before November 9, 1978, shall be used in lieu of the preliminary estimate of such implicit price deflator.

(b) Rules of general application

(1) Depth

Except where otherwise provided, the depth of the completion location of any well shall be the true vertical depth, measured from the surface location of the well.

(2) Commercial quantities

In determining whether production of natural gas has occurred in commercial quantities, quantities of natural gas produced from a

well and used for the testing of such well or for other field uses which are production related shall not be taken into account.

(3) Computation of monthly equivalent

For purposes of computing any price under this subchapter, the monthly equivalent of any factor shall be the twelfth root of such factor.

(4) Application of ceiling prices

The maximum lawful ceiling prices under this subchapter—

(A) shall only apply to natural gas produced in the United States;

(B) shall apply to the month of delivery without regard to the date of the sale or the date of the contract under which the sale occurs; and

(C) shall not apply to deliveries occurring before the first day of the first month beginning after November 9, 1978.

(5) Sales qualifying under more than one provision

If any natural gas qualifies under more than one provision of this subchapter providing for any maximum lawful price or for any exemption from such a price with respect to any first sale of such natural gas, the provision which could result in the highest price shall be applicable.

(6) Computation and publication of ceiling prices

The Commission shall—

(A) not later than 5 days before the beginning of any month, compute and make available the maximum lawful prices prescribed under this subchapter for such month and the monthly equivalent of the annual inflation adjustment factor for such month, and

(B) as soon as possible thereafter, publish such maximum lawful prices and such factor for such month in the Federal Register.

(7) Rounding

Any maximum lawful price under this subchapter shall be computed to the nearest mill (rounding any fraction thereof which is one-half a mill or higher to the next highest mill).

(8) Computation of initial ceiling prices

In computing any maximum lawful price under the provisions of this subchapter for the first month for which such provisions take effect, if the initial maximum lawful price is established by reference to any month before such month, such maximum lawful price shall be computed as if such provisions had been in effect during each such prior month.

(9) Effect on contract price

In the case of—

(A) any price which is established under any contract for the first sale of natural gas and which does not exceed the applicable maximum lawful price under this subchapter, or

(B) any price which is established under any contract for the first sale of natural gas which is exempted under part B of this subchapter from the application of a maximum lawful price under this subchapter,

such maximum lawful price, or such exemption from such a maximum lawful price, shall not supersede or nullify the effectiveness of the price established under such contract.

(Pub. L. 95-621, title I, § 101, Nov. 9, 1978, 92 Stat. 3356.)

Section Referred to in Other Sections

This section is referred to in section 3343 of this title.

§ 3312. Ceiling price for new natural gas and certain natural gas produced from the Outer Continental Shelf

(a) Application

The maximum lawful price computed under subsection (b) of this section shall apply to any first sale of natural gas delivered during any month in the case of—

(1) new natural gas; and

(2) natural gas produced from any old lease on the Outer Continental Shelf and qualifying under subsection (d) of this section for the new natural gas ceiling price.

(b) Maximum lawful price

The maximum lawful price under this section for any month shall be—

(1) $1.75 per million Btu's, in the case of April 1977; and

(2) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subsection for the preceding month multiplied by the monthly equivalent of a factor equal to the sum of—

(A) the annual inflation adjustment factor applicable for such month; plus

(B) (i) .035, in the case of any month beginning before April 20, 1981; or

(ii) .04, in the case of any month beginning after April 20, 1981.

(c) Definition of new natural gas

(1) General rule

For the purposes of this section, the term "new natural gas" means each of the following categories of natural gas:

(A) New OCS leases

Natural gas determined in accordance with section 3413 of this title to be produced from a new lease on the Outer Continental Shelf.

(B) New onshore wells

Natural gas determined in accordance with section 3413 of this title to be produced (other than from the Outer Continental Shelf) from—

(i) any new well which is 2.5 miles or more (determined in accordance with paragraph (2)) from the nearest marker well; or

(ii) any completion location, of any new well, which is located at a depth at least 1,000 feet below the deepest completion location of each marker well within 2.5 miles (determined in accordance with paragraph (2)) of such new well.

(C) New onshore reservoirs

(i) General rule

Except as provided in clauses (ii) and (iii), natural gas determined in accordance

with section 3413 of this title to be produced (other than from the Outer Continental Shelf) from a reservoir from which natural gas was not produced in commercial quantities before April 20, 1977.

(ii) Behind-the-pipe exclusion

Clause (i) shall not apply to natural gas produced from any reservoir if—

(I) the reservoir was penetrated before April 20, 1977, by an old well from which natural gas or crude oil was produced in commercial quantities (whether or not such production was from such reservoir); and

(II) natural gas could have been produced in commercial quantities from such reservoir through such old well before April 20, 1977.

(iii) Withheld gas exclusion

Clause (i) shall not apply to natural gas produced from any reservoir—

(I) if such natural gas is produced through an old well; and

(II) subject to clause (iv), suitable facilities for the production and delivery to a pipeline of such natural gas were in existence on April 20, 1977.

(iv) Emergency sale facilities

The criteria of clause (iii) (II) shall not be considered to be met by reason of the existence of production and delivery facilities which were installed to carry out sales and deliveries of natural gas—

(I) under section 6 of the Emergency Natural Gas Act of 1977; or

(II) under the emergency sale authority pursuant to Opinion 699-B issued by the Federal Power Commission under section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)].

(2) Determinations of distance

For purposes of determining the distance from any new well to any marker well—

(A) Surface location to surface location

The measurement shall be the horizontal distance from the surface location of the new well to the surface location of the marker well—

(i) in any case in which the new well meets requirements for the nondirectional drilling of wells prescribed by the appropriate State or Federal agency having regulatory jurisdiction over the drilling of such well; or

(ii) in any case in which—

(I) the surface drilling of such new well began on or after February 19, 1977;

(II) production of natural gas in commercial quantities began from such well before November 9, 1978; and

(III) the drilling of such well was not subject to any requirement regarding directional or nondirectional drilling, or the drilling of such well was subject to requirements regarding directional drilling but such requirements did not necessitate the obtaining of any permit or other certificate before drilling began.

(B) Completion location to surface location

In the case of any new well which is not covered by subparagraph (A), the measurements shall be the horizontal distance from—

(i) the closest point of any completion location of the new well, vertically projected to the same elevation as the surface location of the nearest marker well; to

(ii) the surface location of such marker well.

(3) Determination of commercial quantities

For purposes of determining whether production of natural gas has occurred in commercial quantities under paragraph (1)(C)—

(A) a rebuttable presumption exists that production from a reservoir in commercial quantities has not occurred if natural gas has not been sold and delivered from such reservoir before April 20, 1977; and

(B) quantities of natural gas sold in interstate commerce (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.]) shall not be taken into account if such quantities were sold before November 9, 1978—

(i) under section 6 of the Emergency Natural Gas Act of 1977; or

(ii) under the emergency sale authority pursuant to Opinion 699-B issued by the Federal Power Commission under section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)].

(4) New wells which are also marker wells

For purposes of applying subsection (c)(1)(B)(ii) of this section in the case of any marker well which is also a new well under section 3301(3)(B) of this title, the reference in such subsection (c)(1)(B)(ii) of this section to the deepest completion location of any marker well shall be deemed to be a reference to any subsurface location from which natural gas was produced in commercial quantities after January 1, 1970, and before February 19, 1977.

(d) OCS gas qualifying for new natural gas ceiling price

For purposes of this section—

(1) OCS reservoirs discovered on or after July 27, 1976

Natural gas determined in accordance with section 3413 of this title to be produced from an old lease on the Outer Continental Shelf shall qualify for the new natural gas ceiling price if such natural gas is produced from a reservoir which was not discovered before July 27, 1976.

(2) Reservoirs penetrated before July 27, 1976

For purposes of paragraph (1), a reservoir shall be considered as having been discovered before July 27, 1976, if—

(A) such reservoir was penetrated by a well before July 27, 1976; and

(B) with respect to such well—

(i) the results of any production test meeting the requirements of OCS Order No. 4 demonstrate that, as of the time of such test, the reservoir is capable of pro-

ducing in paying quantities (within the meaning of such Order);

(ii) any production capability evidence meeting the requirements of OCS Order No. 4 demonstrates that, as of the time such evidence is obtained, the reservoir is capable of producing in paying quantities (within the meaning of such Order); or

(iii) subject to paragraph (3), an induction-electric log, sidewall cores and core analysis, or a wire line formation test indicates that, as of the time of such test, the reservoir is commercially producible.

(3) Effect of negative production capability tests

For purposes of paragraph (1), a reservoir shall not be considered as having been discovered before July 27, 1976, by the penetration of such reservoir by a well before July 27, 1976, if, with respect to such well—

(A) a production test meeting the requirements of OCS Order No. 4 was performed and the results of such test fail to demonstrate that, as of the time of such test, such reservior [1] was capable of producing in paying quantities (within the meaning of such Order; and

(B) production capability evidence meeting the requirements of OCS Order No. 4 does not exist or, if existing, does not demonstrate that, as of the date such evidence was obtained, such reservoir was capable of producing in paying quantities (within the meaning of such Order).

(4) Burden of proof

For purposes of paragraph (1), the producer shall have the burden of showing that—

(A) no test described in paragraph (2)(B)(i) or (iii) was performed and no evidence described in paragraph (2)(B)(ii) or (iii) exists; or

(B) if any such test was performed or such evidence exists, the results of such test or such evidence do not provide the applicable demonstration or indication specified under paragraph (2).

(5) Definition of OCS Order No. 4

For purposes of this subsection, the term "OCS Order No. 4" means the order numbered 4 of the Conservation Division, Geological Survey, Department of the Interior, as approved by the Chief of the Conservation Division on August 28, 1969.

(e) Exclusion of certain Alaska natural gas

The preceding provisions of this section shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976 [15 U.S.c. 719 et seq.].

(Pub. L. 95-621, title I, § 102, Nov. 9, 1978, 92 Stat. 3358.)

REFERENCES IN TEXT

Section 6 of the Emergency Natural Gas Act of 1977, referred to in subsec. (c)(1)(C)(iv)(I), (3)(B)(i), is Pub. L. 95-2, § 6, Feb. 2, 1977, 91 Stat. 7, which is set out in a note under section 717 of this title.

[1] So in original. Probably should be "reservoir".

The Natural Gas Act, and such Act referred to in subsec. (c)(3)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (e), is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3313, 3315, 3316, 3317, 3331, 3332, 3343, 3375, 3413, 3431 of this title.

§ 3313. Ceiling price for new, onshore production wells

(a) Application

In the case of natural gas determined in accordance with section 3413 of this title to be produced from any new, onshore production well, the maximum lawful price computed under subsection (b) of this section shall apply to any first sale of such natural gas delivered during any month.

(b) Maximum lawful price

(1) General rule

The maximum lawful price under this section for any month shall be—

(A) $1.75 per million Btu's, in the case of April 1977; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(2) Production after 1984 from wells 5,000 feet or less in depth

Effective beginning with the month of January 1985 and in any month thereafter, in the case of any first sale of natural gas which was not committed or dedicated to interstate commerce on April 20, 1977, and which is produced from a new, onshore production well from a completion location located at a depth of 5,000 feet or less, the maximum lawful price under this section for any such natural gas delivered during any month shall be a price which is midway between—

(A) the maximum lawful price, per million Btu's, computed for such month under section 3312 of this title (relating to new natural gas); and

(B) the maximum lawful price, per million Btu's, computed for such month under paragraph (1).

(c) Definition of new, onshore production well

For purposes of this section, the term "new, onshore production well" means any new well (other than a well located on the Outer Continental Shelf)—

(1) the surface drilling of which began on or after February 19, 1977;

(2) which satisfies applicable Federal or State well-spacing requirements, if any; and

(3) which is not within a proration unit—

(A) which was in existence at the time the surface drilling of such well began;

(B) which was applicable to the reservoir from which such natural gas is produced; and

(C) which applied to a well (i) which produced natural gas in commercial quantities or (ii) the surface drilling of which was begun before February 19, 1977, and which was thereafter capable of producing natural gas in commercial quantities.

(d) Exclusion of certain Alaska natural gas

The preceding provisions of this section shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719 et seq.].

(Pub. L. 95-621, title I, § 103, Nov. 9, 1978, 92 Stat. 3361.)

REFERENCES IN TEXT

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (d), is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 3331, 3332, 3343, 3375, 3413, 3431 of this title.

§ 3314. Ceiling price for sales of natural gas dedicated to interstate commerce

(a) Application

In the case of natural gas committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the Natural Gas Act [15 U.S.C. 717 et seq.] was in effect on such date for the first sale of such natural gas, the maximum lawful price computed under subsection (b) of this section shall apply to any first sale of such natural gas delivered during any month.

(b) Maximum lawful price

(1) General rule

The maximum lawful price under this section for any month shall be the higher of—

(A)(i) the just and reasonable rate, per million Btu's, established by the Commission which was (or would have been) applicable to the first sale of such natural gas on April 20, 1977, in the case of April 1977; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month, or

(B) any just and reasonable rate which was established by the Commission after April 27, 1977, and before November 9, 1978, and which is applicable to such natural gas.

(2) Ceiling prices may be increased if just and reasonable

The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) just and reasonable within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95-621, title I, § 104, Nov. 9, 1978, 92 Stat. 3362.)

REFERENCES IN TEXT

The Natural Gas Act, and such Act referred to in subsecs. (a) and (b)(2)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§ 3315. Ceiling price for sales under existing intrastate contracts

(a) Application

The maximum lawful price computed under subsection (b) of this section shall apply to any first sale of natural gas delivered during any month in the case of natural gas, sold under any existing contract or any successor to an existing contract, which was not committed or dedicated to interstate commerce on November 8, 1978.

(b) Maximum lawful price

(1) General rule

Subject to paragraphs (2) and (3), the maximum lawful price under this section shall be the lower of—

(A) the price under the terms of the existing contract, to which such natural gas was subject on November 9, 1978, as such contract was in effect on such date; or

(B) the maximum lawful price, per million Btu's, computed for such month under section 3312 of this title (relating to new natural gas).

(2) Contract price exceeding new gas ceiling price on November 9, 1978

In the case of any natural gas described in subsection (a) of this section for which the contract price applicable on November 9, 1978, exceeds the maximum lawful price, per million Btu's, computed for such date under section 3312 of this title (relating to new natural gas), the maximum lawful price under this section shall be the higher of—

(A) the maximum lawful price, per million Btu's, computed for such month under section 3312 of this title; or

(B)(i) the contact[1] price on November 9, 1978, in the case of November, 1978; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

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[1] So in original. Probably should be "contract".

(3) Price increases resulting from indefinite price escalator clauses

(A) In general

Effective January 1985, and each month thereafter, in the case of any first sale of natural gas, which is sold at a price established under any indefinite price escalator clause of any existing contract or successor to an existing contract and for which the contract price on December 31, 1984, is higher than $1.00 per million Btu's, the maximum lawful price under this section for any such natural gas delivered during any month shall be the higher of—

(i) the maximum lawful price, per million Btu's, computed under paragraph (2)(B); or

(ii)(I) in the case of January 1985, the maximum lawful price, per million Btu's, computed under section 3312 of this title (relating to new natural gas) for such month; and

(II) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this clause for the immediately preceding month multiplied by the monthly equivalent of the sum of a factor equal to the annual inflation adjustment factor applicable for such month plus .03.

(B) Definition of indefinite price escalator clause

For purposes of this paragraph, the term "indefinite price escalator clause" includes any provision of any contract—

(i) which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or

(ii) which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties.

(C) Contract modifications after May 3, 1978, to be disregarded

In the case of any natural gas which was subject to any contract on May 3, 1978, that contained an indefinite price escalator clause on such date, no amendment to or modification of the operation of such contract made after such date may have the effect of limiting or precluding the application of this paragraph on or after January 1, 1985, to prices allowed with respect to such natural gas.

(D) Exclusion

Subparagraph (A) shall not apply to any first sale of new natural gas (as defined in section 3312(c) of this title), stripper well natural gas (as defined in section 3318(b) of this title), high-cost natural gas (as defined in section 3317(c) of this title), natural gas produced from a new, onshore production well (as defined in section 3313(c) of this title) from a completion location located at a depth of more than 5,000 feet, and, beginning July 1, 1987, or, if later, the date of expiration of any price controls reimposed under section 3332 of this title, natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title) from a completion location located at a depth of 5,000 feet or less.

(c) Definition of contract price

For purposes of this section, the term "contract price", when used with respect to any specific date, means—

(1) the price paid, per million Btu's, under a contract for deliveries of natural gas occurring on such date; or

(2) if no deliveries of natural gas occurred under such contract on such date, the price, per million Btu's, that would have been paid had such deliveries occurred on such date.

(Pub. L. 95-621, title I, § 105, Nov. 9, 1978, 92 Stat. 3363.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3331, 3373, 3411 of this title.

§ 3316. Ceiling price for sales under rollover contracts

(a) Interstate rollover contracts

In the case of any first sale under any rollover contract of natural gas which was committed or dedicated to interstate commerce on November 8, 1978, the maximum lawful price under this subsection for such natural gas delivered during any month shall be the higher of—

(1)(A) in the case of the month in which the effective date of such rollover contract occurs, the just and reasonable rate, if any, per million Btu's, established by the Commission and applicable on such date to the natural gas subject to the expired contract; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month; or

(2)(A) $0.54 per million Btu's, in the case of April 1977; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month. For purposes of this subsection, the term "rollover contract" includes any contract which would have been a rollover contract but for the fact that the expiration of the previous contract occurred prior to November 8, 1978.

(b) Intrastate rollover contracts

(1) General rule

In the case of any first sale under any rollover contract of natural gas which was not committed or dedicated to interstate commerce on November 8, 1978, the maximum lawful price under this subsection for such natural gas delivered during any month shall be the higher of—

(A)(i) the maximum price paid under the expired contract, per million Btu's, in the case of the month in which the effective date of such rollover contract occurs; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month; or

(B)(i) $1.00 per million Btu's, in the case of April 1977; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(2) Certain State or Indian production or royalty shares

(A) General rule

In the case of any first sale under any rollover contract of natural gas which was not committed or dedicated to interstate commerce on November 8, 1978, and which constitutes a State government's or Indian tribe's natural gas production, or royalty share or other interest (as of such day) in natural gas production, from real property (including subsurface mineral interests) owned on November 9, 1978, by such State government or Indian tribe (as the case may be), the maximum lawful price under this subsection for any such natural gas delivered during any month shall be the maximum lawful price, per million Btu's, computed for such month under section 3312 of this title (relating to new natural gas).

(B) Indian tribal lands

For purposes of this paragraph, land shall be considered to be owned by an Indian tribe only if—

(i) such land is owned directly by such tribe; or

(ii) such land is held by the United States or any State in trust for Indian persons and is located within the boundaries of an Indian reservation (as such boundaries were in effect on November 9, 1978).

(C) Definitions

For purposes of this paragraph—

(i) State government

The term "State government" means any State or any agency, instrumentality, or political subdivision of a State.

(ii) Indian tribe

The term "Indian tribe" means any Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians.

(c) Ceiling prices may be increased if just and reasonable

The Commission may, by rule or order, prescribe a maximum lawful price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

(1) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(2) just and reasonable within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95-621, title I, § 106, Nov. 9, 1978, 92 Stat. 3365.)

REFERENCES IN TEXT

The Natural Gas Act, and such Act referred to in subsec. (c)(2), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3320, 3411 of this title.

§ 3317. Ceiling price for high-cost natural gas

(a) Wells completed below 15,000 feet

In the case of any first sale of high-cost natural gas produced from any well the surface drilling of which began on or after February 19, 1977, if such production is from any completion location which is located at a depth of more than 15,000 feet, the maximum lawful price under this section for such natural gas delivered during any month shall be the maximum lawful price, per million Btu's, computed for such month under section 3312 of this title (relating to new natural gas).

(b) Commission authority to prescribe higher incentive prices

The Commission may, by rule or order, prescribe a maximum lawful price, applicable to any first sale of any high-cost natural gas, which exceeds the otherwise applicable maximum lawful price to the extent that such special price is necessary to provide reasonable incentives for the production of such high-cost natural gas.

(c) Definition of high-cost natural gas

For purposes of this section, the term "high-cost natural gas" means natural gas determined in accordance with section 3413 of this title to be—

(1) produced from any well the surface drilling of which began on or after February 19, 1977, if such production is from a completion location which is located at a depth of more than 15,000 feet;

(2) produced from geopressured brine;

(3) occluded natural gas produced from coal seams;

(4) produced from Devonian shale; and

(5) produced under such other conditions as the Commission determines to present extraordinary risks or costs.

(d) Provisions for high-cost natural gas to be elective

If any credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax is specifically allowable with respect to any high-cost natural gas (or category thereof) under any provision of law enacted after November 9, 1978, the provisions of subsections (a) and (b) of this section and the provisions of part B of this subchapter shall not apply to such natural gas produced

from any well unless an election to have such provisions apply (in lieu of such credit, exemption, deduction, or adjustment) with respect to such natural gas produced from such well is filed with the Commission on or before the later of—

(A) the 30th day after November 9, 1978, under which such credit, exemption, deduction, or adjustment is provided; or

(B) the date the surface drilling of such well began.

(Pub. L. 95-621, title I, § 107, Nov. 9, 1978, 92 Stat. 3366.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 3331, 3332, 3343, 3373, 3375, 3413, 3431 of this title.

§ 3318. Ceiling price for stripper well natural gas

(a) General rule

In the case of any first sale of stripper well natural gas the maximum lawful price under this section for such natural gas delivered during any month shall be—

(1) $2.09 per million Btu's, in the case of May 1978; and

(2) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subsection for the preceding month multiplied by the monthly equivalent of a factor equal to the sum of—

(A) the annual inflation adjustment factor applicable for such month; plus

(B)(i) .035, in the case of any month beginning before April 20, 1981; or

(ii) .04, in the case of any month beginning after April 20, 1981.

(b) Definition of stripper well natural gas

(1) General rule

Except as provided in paragraph (2), the term "stripper well natural gas" means natural gas determined in accordance with section 3413 of this title to be nonassociated natural gas produced during any month from a well if—

(A) during the preceding 90-day production period, such well produced nonassociated natural gas at a rate which did not exceed an average of 60 Mcf per production day during such period; and

(B) during such period such well produced at its maximum efficient rate of flow, determined in accordance with recognized conservation practices designed to maximize the ultimate recovery of natural gas.

(2) Production in excess of 60 Mcf

The Commission shall, by rule, provide that, if nonassociated natural gas produced from a well which previously qualified as a stripper well under paragraph (1) exceeds an average of 60 Mcf per production day during any 90-day production period, such natural gas may continue to qualify as stripper well natural gas if the increase in nonassociated natural gas produced from such well was the result of the application of recognized enhanced recovery techniques.

(3) Definitions

For purposes of this subsection—

(A) Production day

The term "production day" means—

(i) any day during which natural gas is produced; and

(ii) any day during which natural gas is not produced if production during such day is prohibited by a requirement of State law or a conservation practice recognized or approved by the State agency having regulatory jurisdiction over the production of natural gas.

(B) 90-day production period

The term "90-day production period" means any period of 90 consecutive calendar days excluding any day during which natural gas is not produced for reasons other than voluntary action of any person with the right to control production of natural gas from such well.

(C) Nonassociated natural gas

The term "nonassociated natural gas" means natural gas which is not produced in association with crude oil.

(Pub. L. 95-621, title I, § 108, Nov. 9, 1978, 92 Stat. 3367.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 3343, 3413 of this title.

§ 3319. Ceiling price for other categories of natural gas

(a) Application

The maximum lawful price computed under subsection (b) of this section shall apply to any first sale of any natural gas delivered during any month, in the case of any natural gas which is not covered by any maximum lawful price under any other section of this part, including—

(1) natural gas produced from any new well not otherwise qualifying for a higher maximum lawful price under this subchapter;

(2) natural gas committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the Natural Gas Act [15 U.S.C. 717 et seq.] was not in effect on such date for the first sale of such natural gas;

(3) natural gas which was not committed or dedicated to interstate commerce on November 8, 1978, and which was not subject to an existing contract on such day; and

(4) natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719 et seq.].

(b) Maximum lawful price

(1) The maximum lawful price under this section for any month shall be—

(A) $1.45 per million Btu's, in the case of April 1977; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equiva-

lent of the annual inflation adustment[1] factor applicable for such month.

The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) just and reasonable within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95-621, title I, § 109, Nov. 9, 1978, 92 Stat. 3368.)

REFERENCES IN TEXT

The Natural Gas Act, and such Act referred to in subsecs. (a)(2) and (b)(2)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (a)(4), is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3343, 3411, 3413 of this title.

§ 3320. Treatment of State severance taxes and certain production-related costs

(a) Allowance for State severance taxes and certain production-related costs

Except as provided in subsection (b) of this section, a price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas under this part if such first sale price exceeds the maximum lawful price to the extent necessary to recover—

(1) State severance taxes attributable to the production of such natural gas and borne by the seller, but only to the extent the amount of such taxes does not exceed the limitation of subsection (b) of this section; and

(2) any costs of compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or other similar costs, borne by the seller and allowed for, by rule or order, by the Commission.

(b) Limitation on State severance taxes

The State severance tax allowable under subsection (a)(1) of this section with respect to the production of any natural gas may not include any amount of State severance taxes borne by the seller which results from a provision of State law enacted on or after December 1, 1977, unless such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

(c) Definition of State severance tax

For purposes of this section, the term "State severance tax" means any severance, production, or similar tax, fee, or other levy imposed on the production of natural gas—

(1) by any State or Indian tribe (as defined in section 3316(b)(2)(B)(ii) of this title); and

(2) by any political subdivision of a State if the authority to impose such tax, fee, or other levy is granted to such political subdivision under State law.

(Pub. L. 95-621, title I, § 110, Nov. 9, 1978, 92 Stat. 3368.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3332, 3343 of this title.

PART B—DECONTROL OF CERTAIN NATURAL GAS PRICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3311, 3317, 3431 of this title.

§ 3331. Elimination of price controls for certain natural gas sales

(a) General rule

Subject to the reimposition of price controls as provided in section 3332 of this title, the provisions of part A of this subchapter respecting the maximum lawful price for the first sale of each of the following categories of natural gas shall, except as provided in subsections (d) and (e) of this section, cease to apply effective January 1, 1985:

(1) New natural gas

New natural gas (as defined in section 3312(c) of the title).

(2) New, onshore production wells

Natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title), if such natural gas—

(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

(B) is produced from a completion location which is located at a depth of more than 5,000 feet.

(3) Intrastate contracts in excess of $1.00

Natural gas sold under an existing contract, any successor to an existing contract, or any rollover contract, if—

(A) such natural gas was not committed or dedicated to interstate commerce on November 8, 1978; and

(B) the price paid for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price would have been paid had deliveries occurred on such date is higher than $1.00 per million Btu's.

(b) High-cost natural gas

Effective beginning on the effective date of the incremental pricing rule required under section 3341 of this title, the provisions of part A of this subchapter respecting the maximum lawful price for the first sale of natural gas shall cease to apply to the first sale of high-cost natural gas which is described in section 3317(c)(1), (2), (3), or (4) of this title.

(c) Natural gas produced from 5,000 or less

Effective beginning July 1, 1987, or, if later, the date of expiration of any price controls

[1] So in original. Probably should be "adjustment".

reimposed under section 3332 of this title, the provisions of part A of this subchapter respecting the maximum lawful price for any first sale of natural gas shall, except as provided in subsection (d) of this section, cease to apply to any first sale of natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title), if such natural gas—

(1) was not committed or dedicated to interstate commerce on April 20, 1977; and

(2) is produced from a completion location which is located at a depth of 5,000 feet or less.

(d) Exclusion of certain Alaska natural gas

The provisions of subsections (a) and (c) of this section shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719 et seq.].

(e) Limitation on indefinite price escalators

Natural gas which is not subject to maximum lawful prices under part A of this subchapter solely by reason of subsection (a)(3) of this section and which is sold under any existing contract or successor to an existing contract at a price established under an indefinite price escalator clause (as defined in section 3315(b)(3)(B) of this title) shall be subject to the provisions of section 3315(b)(3) of this title.

(Pub. L. 95–621, title I, § 121, Nov. 9, 1978, 92 Stat. 3369.)

REFERENCES IN TEXT

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (d), is Pub. L. 94–586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3332 of this title.

§ 3332. Standby price control authority

(a) Reimposition of price controls

The President, in accordance with subsection (c)(1) of this section, or the Congress, in accordance with subsection (c)(2) of this section, may reimpose maximum lawful prices for first sales of natural gas to which section 3331(a) of this title applies and delivery of which occurs after the effective date of the reimposition of such maximum lawful prices.

(b) Limitations

A reimposition of maximum lawful prices under this section—

(1) may not take effect earlier than July 1, 1985, nor later than June 30, 1987; and

(2) shall remain in effect for a period of 18 months.

(c) Procedure for reimposing price controls

For purposes of this section—

(1) Presidential reimposition

Any exercise of authority by the President under subsection (a) of this section shall be by written order issued after May 31, 1985, and, subject to subsection (b) of this section, shall take effect for the first month beginning after the first 30 calendar days of continuous session of Congress (as determined in accordance with section 3417(b) of this title) after a copy of such order has been submitted to each House of the Congress unless during such 30 calendar days of continuous session of Congress, the Congress adopts a concurrent resolution of disapproval described in section 3417(c)(1) of this title.

(2) Congressional reimposition

Any exercise of authority by the Congress under subsection (a) of this section shall be by the adoption of a concurrent resolution after May 31, 1985, described in section 3417(c)(2) of this title and, subject to subsection (b) of this section, shall take effect for the first month beginning after the date of the adoption of such resolution.

(d) Maximum lawful prices applicable under reimposition of price control

If maximum lawful prices are reimposed under this section on first sales of natural gas to which section 3331(a) of this title applies, the maximum lawful price under this section for any first sale of such natural gas delivered during any month shall be—

(1) except as provided in paragraph (2), the maximum lawful price, per million Btu's, computed for such month under section 3312 of this title (relating to new natural gas); and

(2) the maximum lawful price, per million Btu's, computed for such month under section 3313(b)(2) of this title (relating to new, onshore production wells 5,000 feet or less in depth), in the case of natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title) if such natural gas—

(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

(B) is produced from a completion location which is located at a depth of 5,000 feet or more.

(e) Allowance for State severance taxes and certain production-related costs

A price may exceed the maximum lawful price applicable for such natural gas under this section to the same extent as is provided under section 3320 of this title with respect to maximum lawful prices under part A of this subchapter.

(f) Limitation

Maximum lawful prices may be reimposed only once under this section.

(Pub. L. 95–621, title I, § 122, Nov. 9, 1978, 92 Stat. 3370.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 3331, 3417 of this title.

§ 3333. Report to the Congress

(a) Reports

On or before July 1, 1984, and on or before January 1, 1985, the Department of Energy shall prepare and transmit to the President and

to each House of the Congress a report on natural gas prices, supplies, and demand, and the competitive conditions and market forces in the natural gas industry in the United States. Each such report shall include an evaluation by the Department of Energy whether equilibrium exists between supply and demand for natural gas.

(b) Public comment

In preparing each report required under subsection (a) of this section, the Department of Energy shall provide an opportunity for public comment with respect to matters required under subsection (a) of this section to be included in such report.

(Pub. L. 95–621, title I, § 123, Nov. 9, 1978, 92 Stat. 3371.)

SUBCHAPTER II—INCREMENTAL PRICING

§ 3341. Industrial boiler fuel use

(a) In general

Not later than 12 months after November 9, 1978, the Commission shall prescribe and make effective (and may from time to time amend) a rule designed to provide for the passthrough, in accordance with the provisions of this subchapter, of the costs of natural gas which are—

(1) described in section 3343 of this title; and

(2) incurred by any interstate pipeline.

(b) Initial application

The requirements of the rule under this section shall apply with respect to the boiler fuel use of natural gas by any industrial boiler fuel facility.

(c) Definitions

For purposes of this section—

(1) Industrial boiler fuel facility

The term "industrial boiler fuel facility" means any industrial facility, as defined by the Commission, which uses natural gas as a boiler fuel and which is not exempt under section 3346 of this title.

(2) Boiler fuel use

The term "boiler fuel use" means the use of any fuel for the generation of steam or electricity.

(Pub. L. 95–621, title II, § 201, Nov. 9, 1978, 92 Stat. 3371.)

Section Referred to in Other Sections

This section is referred to in sections 3331, 3342, 3343, 3344, 3346 of this title.

§ 3342. Amendment expanding application for other industrial uses

(a) In general

(1) Commission rule

Not later than 18 months after November 9, 1978, the Commission shall, by rule, prescribe an amendment to the rule required under section 3341 of this title designed to provide for the passthrough, in accordance with the provisions of this subchapter, of the costs of natural gas which are—

(A) described in section 3343 of this title; and

(B) incurred by any interstate pipeline.

(2) Effectiveness

The amendment required by this section, and any amendment to the rule under section 3341 of this title which is applicable to facilities to which the amendment required by this section applies (other than a technical or clerical amendment), shall take effect only as provided under subsection (c) of this section.

(b) Expanded application

The requirements of the rule under section 3341 of this title, as amended under subsection (a) of this section, shall apply with respect to the industrial use of natural gas (as defined by the Commission in such rule), including boiler fuel use of natural gas (as defined in section 3341(c)(2) of this title) by—

(1) any industrial boiler fuel facility (as defined in section 3341(c)(1) of this title); and

(2) any industrial facility which is within a category defined by the Commission in such amendment as subject thereunder to the requirements of such rule which is not exempt under section 3346 of this title.

(c) Congressional review

(1) In general

Any amendment, the effectiveness of which is subject to this subsection, shall take effect beginning with the first month which begins more than 30 days after the first 30 calendar days of continuous session of Congress (determined in accordance with section 3417(b) of this title[1] after a copy of such amendment has been submitted to each House of the Congress or on such later date, not more than 90 days thereafter, as may be provided in such amendment unless, during such 30 day period of continuous session of Congress, either House of the Congress adopts a resolution of disapproval described in section 3417(c)(3) of this title with respect to such amendment.

(2) Authority in the event of Congressional disapproval

(A) Authority to resubmit

If either House of the Congress adopts a resolution of disapproval with respect to the amendment required under subsection (a) of this section (or any amendment proposed and submitted under this subparagraph), the Commission may thereafter submit to each House of the Congress an amendment, satisfying the requirements of subsections (a) and (b) of this section, which amendment shall take effect as provided under paragraph (1).

(B) Limitation

The authority of subparagraph (A) may not be exercised—

(i) earlier than 6 months after the date of the adoption of the most recent resolution of disapproval with respect to any such amendment under this section; and

(ii) later than 2 years after the date of the adoption of any resolution of disap-

[1] So in original. Probably should have closing parenthesis.

proval described in section 3417(c)(3) of this title with respect to the amendment required under subsection (a) of this section.

(Pub. L. 95-621, title II, § 202, Nov. 9, 1978, 92 Stat. 3372.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3343, 3344, 3346, 3417 of this title.

§ 3343. Acquisition costs subject to passthrough

(a) In general

The following costs shall be subject to the passthrough requirements of the rule prescribed under section 3341 of this title (including any amendment under section 3342 of this title):

(1) New natural gas

In the case of new natural gas (as defined in section 3312(c) of this title), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs.

(2) Natural gas under intrastate rollover contract

In the case of natural gas, delivered under a rollover contract, which was not committed or dedicated to interstate commerce on November 8, 1978, any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which such delivery occurs.

(3) New, onshore production well gas

In the case of natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs.

(4) LNG imports

Subject to section 3347 of this title, in the case of liquefied natural gas imported into the United States, any portion of the first sale acquisition cost of such natural gas (whether or not liquefied when acquired) which exceeds the incremental pricing threshold applicable for the month in which such liquefied natural gas enters the United States.

(5) Natural gas (other than LNG) imports

Subject to section 3347 of this title, in the case of natural gas (other than liquefied natural gas) imported into the United States, any portion of the first sale acquisition cost of such imported natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 3312 of this title (relating to new natural gas) for the month in which such natural gas enters the United States, without regard to section 3320 of this title.

(6) Stripper well natural gas

In the case of stripper well natural gas (as defined in section 3318(b) of this title), any portion of the first sale acquisition cost of such natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 3312 of this title (relating to new natural gas) for the month in which the delivery of such natural gas occurs, without regard to section 3320 of this title.

(7) High-cost natural gas

In the case of high-cost natural gas (as defined in section 3317(c) of this title), any portion of the first sale acquisition cost of such natural gas which exceeds 130 percent of the amount the Commission determines represents—

(A) the weighted average per barrel cost of Number 2 fuel oil landed in the greater New York City metropolitan area, during an appropriate period preceding the month during which delivery of such natural gas occurs; divided by

(B) a Btu conversion factor of 5.8 million[1] Btu's per barrel.

(8) Alaska natural gas transportation system

In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719 et seq.]—

(A) any portion of the first sale acquisition cost of such natural gas which is not described in subparagraph (B) and which exceeds the maximum lawful price, per million Btu's, computed under section 3319 of this title (relating to other categories of natural gas) for the month in which delivery of such natural gas occurs, without regard to section 3320 of this title; and

(B) any amount paid to any person (other than the producer of such natural gas or an affiliate of such producer) for, or attributable to, any compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or any similar service provided with respect to such natural gas, before the delivery of such natural gas to such system.

(9) Increased State severance taxes

(A) Increases included

Any portion of the cost of natural gas at any first sale attributable to any increase in the amount of State severance taxes (as defined in section 3320(c) of this title) which results from a provision of State law enacted on or after December 1, 1977.

(B) Certain changes allowed in method of computing tax

Subparagraph (A) shall not apply to any increase in State severance taxes resulting from a change in the method of computation of such tax by reason of any provision of State law enacted on or after December 1, 1977, if—

(i) as of the effective date of such change in method of computation, such increase does not result in an increase in the level of such tax, expressed as a percentage of the weighted average first sale price of natural gas produced in such

[1] So in original. Probably should be "million".

State, above the percentage of such average first sale price which such tax constituted on the day before such effective date; and

(ii) such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

(C) Determination of average price

The price to be used in determining the weighted average first sale price for purposes of clause (i) shall be the price paid at the first sale which is used by such State in administering such tax (or an imputed value, if the State uses an event other than a first sale in administering such tax).

(10) Purchases under section 3371 of this title

In the case of any sale of natural gas authorized under section 3371 of this title, any portion of any amount paid, per million Btu's, in the acquisition of such natural gas in any such sale which exceeds the incremental pricing threshold applicable for the month in which such acquisition occurs.

(11) Surcharges paid to other pipelines

The amount of any surcharge (described in section 3344(c)(3) of this title) paid by any interstate pipeline for natural gas acquired by such pipeline from another interstate pipeline.

(b) First sale acquisition costs

(1) General rule

For purposes of this section, the first sale acquisition cost of natural gas is—

(A) the price paid, per million Btu's, in any first sale of such natural gas, in the case of any natural gas produced in the United States and acquired in such first sale; and

(B) the price paid for such natural gas, per million Btu's, at the point of entry to the United States, in the case of natural gas or liquefied natural gas imported into the United States.

Any amount of State severance taxes paid at any first sale shall not be included under subparagraph (A) or (B).

(2) Interstate pipeline production

For purposes of this section, in the case of any natural gas produced by any interstate pipeline or any affiliate of such pipeline, the first sale acquisition cost of such natural gas shall be determined in accordance with rules prescribed by the Commission.

(c) Incremental pricing threshold

For purposes of this section, the incremental pricing threshold applicable for any month shall be—

(1) $1.48 per million Btu's, in the case of March 1978; and

(2) in the case of any month thereafter, the amount, per million Btu's, determined under this subsection for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor (as defined in section 3311(a) of this title) applicable for such month.

(d) Classification to be based on provisions under which sale price is determined

In the case of natural gas which is described in more than one paragraph of paragraphs (1) through (8) of subsection (a) of this section, the Commission shall, by rule, prescribe the method for determining under which such paragraph the first sale acquisition costs of such natural gas shall be subject to the passthrough requirements of this subchapter, based upon the classification of such natural gas under which the price of such national gas is determined under subchapter I of this chapter.

(Pub. L. 95–621, title II, § 203, Nov. 9, 1978, 92 Stat. 3373.)

REFERENCES IN TEXT

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (a)(8) is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3341, 3342, 3344, 3347 of this title.

§ 3344. Method of passthrough

(a) Establishment of incremental pricing account

The rule required under section 3341 of this title (including any amendment under section 3342 of this title to such rule) shall provide that any interstate pipeline subject to such rule shall establish and maintain an incremental pricing account (hereinafter in this subchapter referred to as the "account").

(b) Credits to account

The rule required under section 3341 of this title (including any amendment under section 3342 of this title to such rule) shall provide that any costs subject to the passthrough requirements of this subchapter under section 3343 of this title (and any carrying charges permitted by the Commission) shall be credited to the account of such pipeline. Amounts so credited may not be allocated to the rates and charges of such pipeline except to the extent provided under this section.

(c) Requirement for direct passthrough

(1) In general

The rule required under section 3341 of this title (including any amendment under section 3342 of this title to such rule) shall be designed to provide that any amounts in any interstate pipeline's account will be passed through, in accordance with a method prescribed under paragraph (2), by means of a surcharge determined in accordance with a method prescribed under paragraph (3).

(2) Surcharge passthrough

The rule required under section 3341 of this title (including any amendment under section 3342 of this title) shall provide—

(A) that any surcharge calculated under paragraph (3) may not be imposed by any interstate pipeline except in accordance with a method prescribed under subparagraph (B); and

(B) one or more methods for imposing such surcharge on the rates and charges of such pipeline applicable to any volume of natural gas delivered, during the calendar period involved, for industrial use to any incrementally priced industrial facilities served directly by such interstate pipeline and to incrementally priced industrial facilities served indirectly through any other interstate pipeline or any local distribution company.

(3) Surcharge

(A) Calculation of surcharge

Subject to subparagraphs (B) and (C), the amount of any surcharge imposed by any interstate pipeline under this subsection on deliveries of natural gas during the calendar period involved shall be based on the dollar amount in such pipeline's account at the beginning of such period and on the volume of natural gas delivered directly or indirectly by such pipeline during such period or a preceding calendar period to incrementally priced industrial facilities for industrial use with such adjustments as the Commission determines necessary to carry out the purposes of this subchapter.

(B) Elimination or reduction of surcharge applicable to a facility

The rule under section 3341 of this title (including any amendment under section 3342 of this title to such rule) shall provide one or more methods which have the effect of eliminating or reducing the amount of the surcharge determined under subparagraph (A) to be passed through under paragraph (2) with respect to volumes of natural gas to be delivered directly or indirectly to any incrementally priced industrial facility for industrial use to the extent that such surcharge, in the absence of such elimination or reduction, would cause the rates and charges, per million Btu's, paid for such volumes of natural gas by that incrementally priced industrial facility to exceed the appropriate alternative fuel cost.

(C) Increase in general surcharge to reflect an adjustment under subparagraph (B)

The rule under section 3341 of this title (including any amendment under section 3342 of this title to such rule) shall provide one or more methods by which, in any case in which the surcharge is eliminated or reduced under subparagraph (5) with respect to certain deliveries of natural gas, the interstate pipeline involved may recover from incrementally priced industrial facilities which are not subject to any surcharge elimination or reduction under subparagraph (B) the dollar amount which would have been so passed through if the elimination or reduction under subparagraph (B) had not occurred.

(D) Exception

The methods prescribed under subparagraphs (B) and (C) need not require—

(i) elimination or reduction under subparagraph (B) of the surcharge with respect to any specific deliveries of natural gas; or

(ii) the increase under subparagraph (C) of the surcharge generally applicable due to any adjustment under subparagraph (B),

if the Commission determines that to do so would be impracticable or unnecessary to carry out the purposes of this subchapter.

(4) Local distribution company direct purchases

In any case in which a local distribution company directly incurs any first sale acquisition cost subject to the passthrough requirements of this subchapter under section 3343 of this title or otherwise directly incurs any other cost subject to such requirements under sections 3343(a)(8)(B), (9), or (10) of this title, such local distribution company shall, with respect to the natural gas involved, be treated for purposes of this subchapter as if it were an interstate pipeline.

(5) Pipelines and local distribution companies with more than one source of natural gas

The rule under section 3341 of this title (including any amendment under section 3342 of this title to such rule) shall prescribe one or more methods for determining, for purposes of paragraph (2)(B) and paragraph (3)(A), the volume of natural gas delivered indirectly by any interstate pipeline to any incrementally priced industrial facility through any other interstate pipeline or local distribution company for purposes of applying subsection (d)(2) of this section.

(d) Deductions from account

(1) In general

Amounts passed through by any interstate pipeline by means of any surcharge under this section shall be deducted from such pipeline's account.

(2) Normal allocation to occur where Btu equivalency is reached for all facilities served by a pipeline

In any case in which the rates and charges to incrementally priced industrial facilities for natural gas delivered, directly or indirectly, by any interstate pipeline for industrial use to incrementally priced industrial facilities subject to the rule required under section 3341 of this title (including any amendment under section 3342 of this title to such rule), are not less than the appropriate alternative fuel cost, such rule shall prescribe one or more methods by which amounts in excess of that reasonably necessary to maintain such rates and charges applicable to such industrial facilities at the appropriate alternative fuel cost may be deducted from such pipeline's account and may be allocated to the rates and charges of such interstate pipeline in any manner which would be permitted in the absence of this subchapter.

(e) Determination of alternative fuel cost

(1) In general

Except as provided in paragraph (2), the appropriate alternative fuel cost for any region (as designated by the Commission) shall be the price, per million Btu's, for Number 2 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel.

(2) Reduction of appropriate alternative fuel cost allowed

The Commission may, by rule or order, reduce the appropriate alternative fuel cost—

(A) for any category of incrementally priced industrial facilities, subject to the rule required under section 3341 of this title (including any amendment under section 3342 of this title to such rule) located within any region and served by the same interstate pipeline; or

(B) for any specific incrementally priced industrial facility which is subject to such requirements and which is located in any region;

to an amount not lower than the price, per million Btu's, for Number 6 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel, if and to the extent the Commission determines, after an opportunity for written and oral presentation of views, data, and arguments, that such reduction is necessary to prevent increases in the rates and charges to residential, small commercial, and other high-priority users of natural gas which would result from a reallocation of costs caused by the conversion of such industrial facility or facilities from natural gas to other fuels, which conversion is likely to occur if the level of the appropriate alternative fuel cost were not so reduced.

(f) Determination of appropriate accounting period

The rule required to be prescribed in section 3341 of this title shall specify the appropriate calendar periods used for purposes of such rule (including any amendment under section 3342 of this title to such rule).

(g) Incrementally priced industrial facility defined

For purposes of this section, the term "incrementally priced industrial facility" means any industrial facility subject to the requirements of the rule under section 3341 of this title (including any amendment under section 3342 of this title to such rule).

(h) Industrial use defined

For purposes of this section, the term "industrial use", when used with respect to natural gas, means the boiler fuel use of natural gas (as defined in section 3341(c)(2) of this title) and any other use defined, by rule, by the Commission as an industrial use.

(Pub. L. 95-621, title II, § 204, Nov. 9, 1978, 92 Stat. 3375.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3343, 3414 of this title.

§ 3345. Local distribution company passthrough requirements

(a) General rule

Any surcharge under this subchapter, paid by any local distribution company with respect to natural gas which is indirectly delivered by any interstate pipeline to incrementally priced industrial facilities which are served by such local distribution company, shall be directly passed through to such industrial facilities.

(b) Prohibition on offsetting modifications in rates and charges

Any modification of the method of allocating costs to the rates and charges of such local distribution company in effect on November 9, 1978, is prohibited if a court, in any action brought under section 3414(b)(3) of this title, determines that such modification has the effect of creating any offset, in the rates and charges for natural gas applicable to any incrementally priced industrial facility served by such company, for the amount of any surcharge under this subchapter paid by such local distribution company with respect to natural gas delivered by any interstate pipeline indirectly to that incrementally priced industrial facility.

(c) Special enforcement authority of Attorney General

In addition to such enforcement authority as may be available to the Commission or any person, the Attorney General may enforce the requirements of this subsection in accordance with the provisions of section 3414(b)(3) of this title.

(d) Preemption of State or local law

The requirements of this subchapter shall preempt and supersede any provision of State or local law to the extent such provision of law would preclude the passthrough of any surcharge under this subchapter or prevent the application of the requirements of this section.

(e) State commission defined

For the purposes of this subsection, the term "State commission" means the State, political subdivision, or any agency of either, having jurisdiction with respect to the rates and charges of any local distribution company.

(Pub. L. 95-621, title II, § 205, Nov. 9, 1978, 92 Stat. 3378.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3414 of this title.

§ 3346. Exemptions

(a) Small existing industrial boiler fuel users

(1) Interim exemption

During the period preceding the effective date of any permanent exemption under paragraph (2), the rule required under section 3341 of this title shall not apply with respect to any boiler fuel use of natural gas by any industrial boiler fuel facility in existence on November 9, 1978, if such use of natural gas by such facility does not exceed an average of 300 Mcf per day during any month of a base period determined appropriate by the Commission.

(2) Permanent exemption

(A) General rule

Not later than 18 months after November 9, 1978, the Commission shall prescribe and make effective a rule providing for the exemption of any small industrial boiler fuel facility from the rule required under section 3341 of this title (including any amendment under section 3342 of this title to such rule).

(B) Definition

For purposes of this paragraph, the term "small industrial boiler fuel facility" means any industrial boiler fuel facility in existence on November 9, 1978, that had an average per day use of natural gas as a boiler fuel during the month of peak use during calendar year 1977 which did not exceed the lesser of—

(i) 300 Mcf; or

(ii) such average daily rate of use during a month of peak use as the Commission determines in such rule is necessary to assure that the volume of natural gas estimated by the Commission to have been used for boiler fuel during calendar year 1977 by facilities which are exempted under this paragraph does not exceed 5 percent of the total volume of natural gas estimated by the Commission to have been used for boiler fuel transported by interstate pipelines and used during calendar year 1977 as a boiler fuel.

(b) Agricultural users of natural gas

(1) Interim exemption

During the period preceding the effective date of any permanent exemption under paragraph (2), the rule prescribed under section 3341 of this title shall not apply to any facility to the extent of any agricultural use of natural gas.

(2) Exemption by rule

Not later than 18 months after November 9, 1978, the Commission shall prescribe and make effective a rule providing for the exemption from the rule required under section 3341 of this title (including any amendment under section 3342 of this title to such rule) any facility with respect to any agricultural use of natural gas for which the Commission determines that an alternative fuel or feedstock is not—

(A) economically practicable; or

(B) reasonably available.

(3) Agricultural use defined

For purposes of this subsection, the term "agricultural use", when used with respect to natural gas, means the use of natural gas to the extent such use is—

(A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, or crop drying; or

(B) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food.

(c) Schools, hospitals, and certain other facilities

The rule under section 3341 of this title (including any amendment to such rule under section 3342 of this title) shall not apply to—

(1) any school, hospital, or other similar institution;

(2) the generation of electricity by any electric utility; or

(3) to the extent provided by the Commission by rule, any qualifying cogenerator (as defined in section 796(18)(B) of title 16.

(d) Other exemptions

(1) In general

The Commission may, by rule or order, provide for the exemption, in whole or in part, of any other incrementally priced industrial facility or category thereof from the rule prescribed under section 3341 of this title (including any amendment under section 3342 of this title to such rule).

(2) Congressional review

Any rule which provides for any exemption under this subsection may take effect after the expiration of the first 30 calendar days of continuous session of Congress (determined in accordance with section 3417(b) of this title) after a copy of such rule has been submitted to each House of the Congress, unless, during such 30 day period of continuous session of Congress, either House of the Congress adopts a resolution of disapproval described in section 3417(c)(3) of this title, with respect to such rule.

(Pub. L. 95–621, title II, § 206, Nov. 9, 1978, 92 Stat. 3379.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3341, 3342, 3417 of this title.

§ 3347. Treatment of certain imports

(a) Certain LNG imports

Except to the extent of a determination otherwise under subsection (c)(1) of this section, the provisions of section 3343(a)(4) of this title shall not apply to the passthrough of the first sale acquisition costs of liquefied natural gas (or natural gas vaporized from liquefied natural gas) imported into the United States if—

(1) the importation of such liquefied natural gas has been authorized under section 3 of the Natural Gas Act [15 U.S.C. 717b] on or before May 1, 1978;

(2) an application for such authority was pending under such section on such date; or

(3) in connection with the granting of any authority under the Natural Gas Act [15 U.S.C. 717 et seq.] to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the Department of Energy Organization Act [42 U.S.C. 7101 et seq.] (or any delegation or assignment thereunder), determines that a contract binding on the importer or other substantial financial commitment of the importer has been made on or before such date.

(b) Certain natural gas imports (other than LNG)

Subject to subsection (c)(2) of this section, the provisions of section 3343(a)(5) of this title shall only apply to the passthrough of the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceeds both—

(1) the maximum delivery obligations, for the month in which such delivery of such natural gas occurs, which is specified in contracts entered into on or before May 1, 1978, and in effect when such delivery occurs; and

(2) the volume of natural gas imported into the United States by the interstate pipeline

involved during any corresponding period (determined appropriate by the Commission) of calendar year 1977.

(c) Authority with respect to incremental pricing of natural gas or LNG imports

(1) LNG imports

Subsection (a) (2) and (3) of this section shall not apply with respect to any liquefied natural gas imports if, in connection with the granting of any authority under the Natural Gas Act [15 U.S.C. 717 et seq.] to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act [42 U.S.C. 7101 et seq.], determines that the provisions of section 3343(a)(4) of this title shall apply with respect to such liquefied natural gas imports.

(2) Natural gas imports (other than LNG)

The provisions of section 3343(a)(5) of this title shall apply to the passthrough of the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceed the volume of natural gas imported into the United States by the interstate pipeline involved during any corresponding period (determined appropriate by the Commission) of calendar year 1977 if, in connection with the granting of any authority under the Natural Gas Act [15 U.S.C. 717 et seq.] to import such natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act [42 U.S.C. 7101 et seq.], determines that the provisions of section 3343(a)(5) of this title shall apply with respect to such natural gas imports.

(Pub. L. 95-621, title II, § 207, Nov. 9, 1978, 92 Stat. 3380.)

REFERENCES IN TEXT

The Natural Gas Act, and such Act referred to in subsecs. (a)(3) and (c), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

The Department of Energy Organization Act, referred to in subsecs. (a)(3) and (c), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§ 7101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3343, 3412, 3416 of this title.

§ 3348. Alaska natural gas

In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719 et seq.]—

(1) any portion of the first sale acquisition cost of such natural gas incurred by any interstate pipeline which is not required to be incrementally priced under this subchapter, and

(2) any amount incurred by any interstate pipeline, for transportation of such natural gas after delivery of such natural gas to such system,

shall be allocated to the rates and charges of such interstate pipeline in accordance with the general principles applicable on November 9, 1978, for establishing rates in connection with the issuing of certificates under the Natural Gas Act [15 U.S.C. 717 et seq.] for interstate pipelines.

(Pub. L. 95-621, title II, § 208, Nov. 9, 1978, 92 Stat. 3381.)

REFERENCES IN TEXT

The Alaska Natural Gas Transportation Act of 1976, referred to in text, is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

The Natural Gas Act, and such Act referred to in text, is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

SUBCHAPTER III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

PART A—EMERGENCY AUTHORITY

§ 3361. Declaration of emergency

(a) Presidential declaration

The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

(1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and

(2) the exercise of authorities under section 3362 or section 3363 of this title is reasonably necessary, having exhausted other alternatives to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) Limitation

(1) Expiration

Any declaration of a natural gas supply emergency (or extension therof) under subsection (a) of this section, shall terminate at the earlier of—

(A) the date on which the President finds that any shortage described in subsection (a) of this section does not exist or is not imminent; or

(B) 120 days after the date of such declaration of emergency (or extension thereof).

(2) Extensions

Nothing in this subsection shall prohibit the President from extending, under subsection (a) of this section, any emergency (or extension thereof), previously declared under subsection (a) of this section, upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

(Pub. L. 95–621, title III, § 301, Nov. 9, 1978, 92 Stat. 3381.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3362, 3363, 3364, 3412, 3416 of this title.

§ 3362. Emergency purchase authority

(a) Presidential authorization

During any natural gas supply emergency declared under section 3361 of this title, the President may, by rule or order, authorize any interstate pipeline or local distribution company served by any interstate pipeline to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for the purchase of emergency supplies of natural gas—

(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser, as determined by the President) if—

(A) such natural gas is not produced from the Outer Continental Shelf; and

(B) the sale or transportation of such natural gas was not pursuant to a certificate issued under the Natural Gas Act [15 U.S.C. 717 et seq.] immediately before the date on which such contract was entered into; or

(2) from any intrastate pipeline, local distribution company, or other person (other than an interstate pipeline or a producer of natural gas).

(b) Contract duration

The duration of any contract authorized under subsection (a) of this section may not exceed 4 months. The preceding sentence shall not prohibit the President from authorizing under subsection (a) of this section a renewal of any contract, previously authorized under such subsection, following the expiration of such contract.

(c) Related transportation and facilities

The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any contract authorized under subsection (a) of this section. The costs of any construction or transportation ordered under this subsection shall be paid by the purchaser of natural gas under the contract with respect to which such order is issued. No order to transport natural gas under this subsection shall require any pipeline to transport natural gas in excess of such pipeline's available capacity.

(d) Maintenance of adequate records

The Commission shall require any interstate pipeline or local distribution company contracting under the authority of this section for natural gas to maintain and make available full and adequate records concerning transactions under this section, including records of the volumes of natural gas purchased under the authority of this section and the rates and charges for purchase and receipt of such natural gas.

(e) Special limitation

No sale under any emergency purchase contract under this section for emergency supplies of natural gas for sale and delivery from any intrastate pipeline which is operating under court supervision as of January 1, 1977, may take effect unless the court approves.

(Pub. L. 95–621, title III, § 302, Nov. 9, 1978, 92 Stat. 3382.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3361, 3363, 3364, 3373, 3374, 3412, 3414, 3416, 3417, 3431, 3432 of this title.

§ 3363. Emergency allocation authority

(a) In general

In order to assist in meeting natural gas requirements for high-priority uses of natural gas during any natural gas supply emergency declared under section 3361 of this title, the President may, by order, allocate supplies of natural gas under subsections (b), (c), and (d) of this section to—

(1) any interstate pipeline;

(2) any local distribution company—

(A) which is served by any interstate pipeline;

(B) which is providing natural gas only for high-priority uses; and

(C) which is in need of deliveries of natural gas to assist in meeting natural gas requirements for high-priority uses of natural gas; and

(3) any person for meeting requirements of high-priority uses of natural gas.

(b) Allocation of certain boiler fuel gas

(1) Required finding

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, emergency purchase authority under section 3362 of this title has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) emergency purchases of natural gas supplies under section 3362 of this title are not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses; and

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to to[1] the maximum extent practicable to terminate such deliveries.

[1] So in original.

(2) Allocation authority

Subject to paragraph (1), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas the use of which has been prohibited by the President pursuant to authority under section 717z of this title (relating to the use of natural gas as a boiler fuel during any natural gas supply emergency).

(c) Allocation of general pipeline supply

(1) Required findings

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (b) of this section has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses;

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries;

(E) such allocation will not create, for the interstate pipeline delivering certificated natural gas, a supply shortage which will cause such pipeline to be unable to meet the natural gas requirements for high-priority uses of natural gas served, directly or indirectly, by such pipeline; and

(F) such allocation will not result in a disproportionate share of deliveries and resulting curtailments of natural gas being experienced by such interstate pipeline when compared to deliveries and resulting curtailments which are experienced as a result of orders issued under this subsection applicable to other interstate pipelines (as determined by the President).

(2) Required notification from State

(A)[1] Notification

The President shall not allocate supplies of natural gas under this subsection unless he is notified by the Governor of any State that—

(i) a shortage of natural gas supplies available to such State exists or is imminent;

(ii) such shortage or imminent shortage endangers the supply of natural gas for high-priority uses in such State; and

(iii) the exercise of authority under State law is inadequate to protect high-priority uses of natural gas in such State from an interruption in natural gas supplies.

(3) Basis of finding

To the maximum extent practicable, the Governor shall submit, together with any notification under subparagraph (A), information upon which he has based his finding under such subparagraph, including—

(i) volumes of natural gas required to meet the natural gas requirements for high-priority uses of natural gas in such State;

(ii) information received from persons in the business of producing, selling, transporting, or delivering natural gas in such State as to the volumes of natural gas supplies available to such State;

(iii) information on the authority under State law which will be exercised to protect high-priority uses; and

(iv) such other information which the President requests or which the Governor determines appropriate to apprise the President of emergency deliveries and transportation of interstate natural gas needed by such State.

(4) Allocation authority

Subject to paragraphs (1), (2), and (5), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of certificated natural gas from any interstate pipeline.

(5) Consideration of alternative fuel availability

In issuing any order under this subsection the President shall consider the relative availability of alternative fuel to natural gas users supplied by the interstate pipeline ordered to make deliveries pursuant to this subsection.

(d) Allocation of user-owned gas

(1) Required finding

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (c) of this section has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses;

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries; and

(E) such allocation will not create, for the person who owns and would otherwise use such natural gas, a supply shortage which will cause such person to be unable to satisfy such person's natural gas requirements for high-priority uses.

(2) Allocation authority

Subject to paragraphs (1) and (3), in order to assist in meeting natural gas requirements

[1] So in original. Subsec. (c) enacted without a subpar. (2)(B).

for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas which would be certificated natural gas but for the second sentence of section 3301(19) of this title.

(3) Consideration of economic feasibility of alternative fuels

In issuing any order under this subsection, the President shall consider the economic feasibility of alternative fuels available to the user which owned the natural gas subject to an order under this subsection.

(e) Limitation

No order may be issued under this section unless the President determines that such order will not require transportation of natural gas by any pipeline in excess of its available transportation capacity.

(f) Industry assistance

The President may request that representatives of pipelines, local distribution companies, and other persons meet and provide assistance to the President in carrying out his authority under this section.

(g) Compensation

(1) In general

If the parties to any order issued under subsection (b), (c), (d), or (h) of this section fail to agree upon the terms of compensation for natural gas deliveries or transportation required pursuant to such order, the President, after a hearing held either before or after such order takes effect, shall, by supplemental order, prescribe the amount of compensation to be paid for such deliveries or transportation and for any other expenses incurred in delivering or transporting natural gas.

(2) Calculation of compensation for certain boiler fuel natural gas

For purposes of any supplemental order under paragraph (1) with respect to emergency deliveries pursuant to subsection (b) of this section, the President shall calculate the amount of compensation—

(A) for supplies of natural gas based upon the amount required to make whole the user subject to the prohibition order, but in no event may such compensation exceed just compensation prescribed in section 717z of this title; and

(B) for transportation, storage, delivery, and other services, based upon reasonable costs, as determined by the President.

(3) Compensation for other natural gas allocated

For the purpose of any supplemental order under paragraph (1), if the party making emergency deliveries pursuant to subsection (c) or (d) of this section—

(A) indicates a preference for compensation in kind, the President shall direct that compensation in kind be provided as expeditiously as practicable;

(B) indicates a preference for compensation, or the President determines that, notwithstanding paragraph (A) of this subsection, any portion thereof cannot practicably be compensated in kind, the President shall calculate the amount of compensation—

(i) for supplies of natural gas, based upon the amount required to make the pipeline and its local distribution companies whole, in the case of any order under subsection (c) of this section, or to make the user from whom natural gas is allocated whole, in the case of any order under subsection (d) of this section including any amount actually paid by such pipeline and its local distribution companies or such user for volumes of natural gas or higher cost synthetic gas acquired to replace natural gas subject to an order under subsection (c) or (d) of this section; and

(ii) for transportation, storage, delivery, and other services, based upon reasonable costs, as determined by the President. Compensation received by an interstate pipeline under this subsection shall be credited to the account of any local distribution company served by that pipeline to the extent ordered by the President to make such local distribution company whole.

(h) Related transportation and facilities

The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any order under subsection (b), (c), or (d) of this section. Compensation for the costs of any construction or transportation ordered under this subsection shall be determined under subsection (g) of this section and shall be paid by the person to whom supplies of natural gas are ordered allocated under this section.

(i) Monitoring

In order to effect the purposes of this part, the President shall monitor the operation of any order made pursuant to this section to assure that natural gas delivered pursuant to this section is applied to high-priority uses only.

(j) Commission study

Not later than June 1, 1979, the Commission shall prepare and submit to the Congress a report regarding whether authority to allocate natural gas, which is not otherwise subject to allocation under this part, is likely to be necessary to meet high-priority uses.

(k) Definition of high-priority use

For purposes of this section, the term "high-priority use" means any—

(1) use of natural gas in a residence;

(2) use of natural gas in a commercial establishment in amounts less than 50 Mcf on a peak day; or

(3) any use of natural gas the curtailment of which the President determines would endanger life, health, or maintenance of physical property.

(Pub. L. 95–621, title III, § 303, Nov. 9, 1978, 92 Stat. 3383.)

Section Referred to in Other Sections

This section is referred to in sections 717z, 3361, 3364, 3373, 3374, 3412, 3414, 3416, 3431, 3432 of this title.

§ 3364. Miscellaneous provisions

(a) Information

(1) Obtaining of information

In order to obtain information to carry out his authority under this part, the President may—

(A) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information, and such answers shall be made within such reasonable period, and under oath or otherwise as the President may determine; and

(c)[1] secure, upon request, any information from any Federal agency.

(2) Enforcement of subpenas and orders

The appropriate United States district court may, upon petition of the Attorney General at the request of the President, in the case of refusal to obey a subpena or order of the President issued under this subsection, issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

(b) Reporting of prices and volumes

In issuing any order under section 3362 or 3363 of this title, the President shall require that the prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order shall be reported to him on a weekly basis. Such reports shall be made available to the Congress.

(c) Presidential reports to Congress

The President shall report to the Congress, not later than 90 days following the termination under section 3361(b) of this title of any declaration of a natural gas supply emergency (or extension thereof) under section 3361(a) of this title, respecting the exercise of authority under section 3361, 3362, 3363 of this title, or this section.

(d) Delegation of authorities

The President may delegate all or any portion of the authority granted to him under section 3361, 3362, 3363 of this title, or this section to such Federal officers or agencies as he determines appropriate, and may authorize such redelegation as may be appropriate. Except with respect to section 552 of title 5, any Federal officer or agency to which authority is delegated or redelegated under this subsection shall be subject only to such procedural requirements respecting the exercise of such authority as the President would be subject to if such authority were not so delegated.

(e) Antitrust protections

(1) Defenses

There shall be available as a defense for any person to civil or criminal action brought for violation of the Federal antitrust laws (or any similar law of any State) with respect to any action taken, or meeting held, pursuant to any order of the President under section 3363(b), (c), (d). or (i) of this title, or any meeting held pursuant to a request of the President under section 3363(g) of this title, if—

(A) such action was taken or meeting held solely for the purpose of complying with the President's request or order;

(B) such action was not taken for the purpose of injuring competition; and

(C) any such meeting complied with the requirements of paragraph (2).

Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(2) Requirements of meetings

With respect to any meeting held pursuant to a request by the President under section 3363(g) of this title or pursuant to an order under section 3363 of this title—

(A) there shall be present at such meeting a full-time Federal employee designated for such purposes by the Attorney General;

(B) a full and complete record of such meeting shall be taken and deposited, together with any agreements resulting therefrom, with the Attorney General, who shall make it available for public inspection and copying;

(C) the Attorney General and the Federal Trade Commission shall have the opportunity to participate from the beginning in the development and carrying out of agreements and actions under section 3363 of this title, in order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of section 3363 of this title and any order thereunder; and

(D) such other procedures as may be specified by the President in such request or order shall be complied with.

(f) Effect on certain contractual obligations

There shall be available as a defense to any action brought for breach of contract under Federal or State Law arising out of any act or omission that such act was taken or that such omission occurred for purposes of complying with any order issued under section 3363 of this title.

(g) Preemption

Any order issued pursuant to this subchapter shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order.

(Pub. L. 95–621, title III, § 304, Nov. 9, 1978 92 Stat. 3387.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3416 of this title.

[1] So in original. Probably should be "(C)".

PART B—OTHER AUTHORITIES AND REQUIREMENTS

§ 3371. Authorization of certain sales and transportation

(a) Commission approval of transportation

(1) Interstate pipelines

(A) In general

The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of —

(i) any intrastate pipeline; and

(ii) any local distribution company.

(B) Just and reasonable rates

The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.]).

(2) Intrastate pipelines

(A) In general

The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

(i) any interstate pipeline; and

(ii) any local distribution company served by any interstate pipeline.

(B) Rates and charges

(i) Maximum fair and equitable price

The rates and charges of any intrastate pipeline with respect to any transportation authorized under subparagraph (A), including any amount computed in accordance with the rule prescribed under clause (ii), shall be fair and equitable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(ii) Commission rule

The Commission shall, by rule, establish the method for calculating an amount necessary to—

(I) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, delivery, or similar service provided by such pipeline in connection with any transportation of natural gas authorized under subparagraph (A); and

(II) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(b) Commission approval of sales

(1) In general

The Commission may, by rule or order, authorize any intrastate pipeline to sell natural gas to—

(A) any interstate pipeline; and

(B) any local distribution company served by any interstate pipeline.

(2) Rates and charges

(A) Maximum fair and equitable price

The rates and charges of any intrastate pipeline with respect to any sale of natural gas authorized under paragraph (1) shall be fair and equitable and may not exceed the sum of—

(i) such intrastate pipeline's weighted average acquisition cost of natural gas;

(ii) an amount, computed in accordance with the rule prescribed under subparagraph (B); and

(iii) any adjustment permitted under subparagraph (C).

(B) Commission rule

The Commission shall, by rule, establish the method for calculating an amount necessary to—

(i) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, or delivery service provided by such pipeline in connection with any sale of natural gas authorized under paragraph (1); and

(ii) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(C) Adjustment

(i) Application

This subparagraph shall apply in any case in which, in order to deliver any volume of natural gas pursuant to any sale authorized under paragraph (1), any intrastate pipeline acquires quantities of natural gas under any existing contract, if—

(I) such intrastate pipeline acquires any volume of natural gas under such contract in excess of that which such pipeline would otherwise have acquired; and

(II) the price paid for such additional volume of natural gas acquired under such contract is greater than such pipeline's weighted average acquisition cost of natural gas, computed without regard to the acquisistion of such additional volume of natural gas.

(ii) Commission adjustment

In any case to which this subparagraph applies, the Commission shall permit an adjustment to the maximum fair and equitable price provided under subparagraph (A) to increase the revenue to the intrastate pipeline under such sale by an amount determined by the Commission to be adequate to offset the additional cost incurred by such pipeline due to any increase in such pipeline's weighted average acquisition cost of natural gas.

(3) Limitation

(A) Two-year duration

No authorization of any sale (or any extension thereof) under paragraph (1) may be for a period exceeding two years.

(B) Extension

Any authorization of any sale under paragraph (1), and any extension of any such authorization under this subparagraph, may be extended by the Commission if such

extension satisfies the requirements of this subsection.

(4) Adequacy of service to intrastate customers

Any sale authorized under paragraph (1) shall be subject to interruption to the extent that natural gas subject to such sale is required to enable the intrastate pipeline involved to provide adequate service to such pipeline's customers at the time of such sale.

(5) Procedural requirements

(A) Affidavit

Any application for authorization of any sale under paragraph (1) shall be accompanied by an affidavit filed by the intrastate pipeline involved and setting forth—

(i) the identity of the interstate pipeline or local distribution company involved;

(ii) each point of delivery of the natural gas from the intrastate pipeline;

(iii) the estimated total and daily volumes of natural gas subject to such sale;

(iv) the price or prices of such volumes; and

(v) such other information as the Commission may, by rule, require.

(B) Verification of compliance

Any application for authorization of any sale under paragraph (1) shall be accompanied by a statement by the intrastate pipeline involved verifying by oath or affirmation that such sale, if authorized, would comply with all requirements applicable to such sale under this subsection and all terms and conditions established, by rule or order, by the Commission and applicable to such sale.

(6) Termination of sales

(A) Hearing

Upon complaint of any interested person, or upon the Commission's own motion, the Commission shall, after affording an opportunity for oral presentation of views and arguments, terminate any sale authorized under paragraph (1) if the Commission determines—

(i) such termination is required to enable the intrastate pipeline involved to provide adequate service to the customers of such pipeline at the time of such sale;

(ii) such sale involves the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(iii) such sale violates any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(iv) such sale circumvents or violates any provision of this chapter.

(B) Suspension pending hearing

Prior to any hearing or determination required under subparagraph (A), upon complaint of any interested person or upon the Commission's own motion, the Commission may suspend any sale authorized under paragraph (1) if the Commission finds that it is likely that the determinations described in subparagraph (A) will be made following the hearing required under subparagraph (A).

(C) Determination

The determination of whether any interruption of any sale authorized under paragraph (1) is required under subparagraph (A)(i) shall be made by the Commission without regard to the character of the use of natural gas by any customer of the intrastate pipeline involved.

(D) State intervention

Any interested State may intervene as a matter of right in any proceeding before the Commission relating to any determination under this section.

(7) Disapproval of application

The Commission shall disapprove any application for authorization of any sale under paragraph (1) if the Commission determines—

(A) such sale would impair the ability of the intrastate pipeline involved to provide adequate service to its customers at the time of such sale (without regard to the character of the use of natural gas by such customer);

(B) such sale would involve the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(C) such sale would violate any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(D) such sale would circumvent or violate any provision of this chapter.

(c) Terms and conditions

Any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe.

(Pub. L. 95-621, title III, § 311, Nov. 9, 1978, 92 Stat. 3388.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3343, 3374, 3431, 3432 of this title.

§ 3372. Assignment of contractual rights to receive surplus natural gas

(a) Authorization of assignments

The Commission may, by rule or order, authorize any intrastate pipeline to assign, without compensation, to any interstate pipeline or local distribution company all or any portion of such intrastate pipeline's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate.

(b) Effect of authorization under subsection (a)

For the effect of an authorization under subsection (a) of this section, see section 3431 of this title (relating to the coordination of this chapter with the Natural Gas Act [15 U.S.C. 717 et seq.]).

(c) Surplus natural gas

For purposes of this section, the term "surplus natural gas" means any natural gas—

(1) which is not committed or dedicated to interstate commerce on November 8, 1978;

(2) the first sale of which is subject to a maximum lawful price established under subchapter I of this chapter; and

(3) which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to receive such natural gas in the absence of any assignment to exceed the then current demands on such pipeline for natural gas.

(Pub. L. 95-621, title III, § 312, Nov. 9, 1978, 92 Stat. 3392.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (b), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3374, 3431 of this title.

§ 3373. Effect of certain natural gas prices on indefinite price escalator clauses

(a) High-cost natural gas

No price paid in any first sale of high-cost natural gas (as defined in section 3317(c) of this title) may be taken into account in applying any indefinite price escalator clause (as defined in section 3315(b)(3)(B) of this title) with respect to any first sale of any natural gas other than high-cost natural gas (as defined in section 3317(c) of this title).

(b) Other transactions

No price paid—

(1) in any sale authorized under section 3362(a) of this title, or

(2) pursuant to any order issued under section 3363(b), (c), (d), or (g) of this title,

may be taken into account in applying any indefinite price escalator clause (as defined in section 3315(b)(3)(B) of this title).

(Pub. L. 95-621, title III, § 313, Nov. 9, 1978, 92 Stat. 3392.)

§ 3374. Clauses prohibiting certain sales, transportation, and commingling

(a) General rule

Any provision of any contract for the first sale of natural gas is hereby declared against public policy and unenforceable with respect to any natural gas covered by this chapter if such provision—

(1) prohibits the commingling of natural gas subject to such contract with natural gas subject to the jurisdiction of the Commission under the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.];

(2) prohibits the sale of any natural gas subject to such contract to, or transportation of any such natural gas by, any person subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.], or otherwise prohibits the sale or transportation in interstate commerce (within the meaning of the Natural Gas Act) of natural gas subject to such contract; or

(3) terminates, or grants any party the option to terminate, any obligation under any such contract as a result of such commingling, sale, or transportation.

(b) Natural gas covered by this chapter

For purposes of subsection (a) of this section, the term "natural gas covered by this chapter" means—

(1) natural gas which is not committed or dedicated to interstate commerce as of November 8, 1978;

(2) natural gas, the sale in interstate commerce of which—

(A) is authorized under section 3362(a) or 3371(b) of this title; or

(B) is pursuant to an assignment under section 3372(a) of this title; and,

(3) natural gas, the transportation in interstate commerce of which is—

(A) pursuant to any order under section 3362(c) or section 3363(b), (c), (d), or (h) of this title; or

(B) authorized by the Commission under section 3371(a) of this title.

(Pub. L. 95-621, title III, § 314, Nov. 9, 1978, 92 Stat. 3392.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§ 3375. Contract duration; right of first refusal; filing of contracts and agreements

(a) Contract duration

(1) General rule

The Commission may, by rule or order, specify the minimum duration of any contract (other than any existing contract) for the purchase of natural gas to which section 3431(a)(1) (A) or (B) of this title is applicable. In no case may the minimum contract duration specified under this paragraph applicable to natural gas produced from any reservoir exceed 15 years or, if less, the commercially producible life of such reservoir. The provisions of this paragraph shall not apply to contracts of natural gas subject to the requirements of paragraph (3).

(2) Nondiscriminatory application

(A) In general

Except as provided in subparagraph (B), the Commission may not exercise the authority provided under paragraph (1) in a manner which—

(i) provides an advantage to interstate pipelines by diverting supplies of natural

gas to interstate pipelines and thereby denying adequate supplies of natural gas to intrastate pipelines; or

(ii) otherwise discriminates between purchases by interstate pipelines and intrastate pipelines of natural gas.

(B) Special circumstances

The Commission may vary any requirement established under paragraph (1) with respect to any contract by an interstate pipeline or intrastate pipeline to the extent necessary to respond to special circumstances.

(3) Contracts for purchase of OCS natural gas

The Commission shall prescribe a rule which shall require that any first sale contract (other than any existing contract) for the purchase of natural gas which is produced from any reservoir on the Outer Continental Shelf and which is new natural gas (as defined in section 3312(b) of this title) or high-cost natural gas (as defined in section 3317(c)(1), (2), (3), or (4) of this title) shall be for a duration of not less than 15 years or, if less, the commercially producible life of the reservoir.

(b) Offers; right of first refusal

(1) Application

This subsection shall apply with respect to any natural gas which is committed or dedicated to interstate commerce on November 8, 1978, and which is—

(A) high-cost natural gas (as defined in section 3317(c)(1), (2), (3), or (4) of this title);

(B) new natural gas (as defined in section 3312(c) of this title); or

(C) natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title).

This subsection shall not apply to any natural gas committed or dedicated to interstate commerce solely by reason of section 3301(18)(A)(i) of this title.

(2) Offer of sale

The Commission shall, by rule, require that if natural gas subject to the requirements of this subsection is produced on or after the first day of the first month beginning after November 9, 1978, a bona fide offer to sell such natural gas must be made to the person who, but for the provisions of section 3431(a)(1)(B) of this title (relating to deregulation), would have been entitled pursuant to the commitment or dedication of such natural gas to interstate commerce to receive such natural gas if such natural gas were sold (or any successor in interest to such person).

(3) Right of first refusal

The Commission shall, by rule, require that following—

(A) the expiration or termination of any contract with respect to the first sale of natural gas subject to the requirements of this subsection to the person who, but for the provisions of section 3431(a)(1)(B) of this title (relating to deregulation), would have been entitled pursuant to the commitment or dedication of such natural gas to interstate commerce to receive such natural gas if such natural gas were sold (or any successor in interest to such person), or

(B) any rejection of any bona fide offer, described in paragraph (2), to sell natural gas subject to the requirements of this subsection,

such person who would have been entitled to receive such natural gas shall be granted a right of first refusal of the first offer to sell such natural gas which, subject to the exercise of any right of first refusal under this paragraph, has been substantially accepted in principle by another person in an arms-length transaction.

(c) Filing of contracts and ancillary agreements

The Commission may, by rule or order, require any first sale purchaser of natural gas under a new contract, a successor to an existing contract, or a rollover contract to file with the Commission a copy of such contract, together with all ancillary agreements and any existing contract applicable to such natural gas.

(Pub. L. 95-621, title III, § 315, Nov. 9, 1978, 92 Stat. 3393.)

SUBCHAPTER IV—NATURAL GAS CURTAILMENT POLICIES

§ 3391. Natural gas for essential agricultural uses

(a) General rule

Not later than 120 days after November 9, 1978, the Secretary of Energy shall prescribe and make effective a rule, which may be amended from time to time, which provides that, notwithstanding any other provision of law (other than subsection (b) of this section) and to the maximum extent practicable, no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use, unless such curtailment—

(1) does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c) of this section; or

(2) is necessary in order to meet the requirements of high-priority users.

(b) Curtailment priority not applicable if alternative fuel available

If the Commission, in consultation with the Secretary of Agriculture, determines, by rule or order, that use of a fuel (other than natural gas) is economically practicable and that the fuel is reasonably available as an alternative for any agricultural use of natural gas, the provisions of subsection (a) of this section shall not apply with respect to any curtailment of deliveries for such use.

(c) Determination of essential agricultural use requirements

The Secretary of Agriculture shall certify to the Secretary of Energy and the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential agricultural uses in order to meet the requirements of full food and fiber production.

(d) Authority of Secretary of Agriculture to intervene

The Secretary of Agriculture may intervene as a matter of right in any proceeding before the Commission which is conducted in connection with implementing the requirements of the rule prescribed under subsection (a) of this section.

(e) Limitation

The Secretary of Agriculture may not exercise any authority under this section for the purpose of restricting the production of any crop.

(f) Definitions

For purposes of this section—

(1) Essential agricultural use

The term "essential agricultural use", when used with respect to natural gas, means any use of natural gas—

(A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or

(B) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food,

which the Secretary of Agriculture determines is necessary for full food and fiber production.

(2) High-priority user

The term "high-priority user" means any person who—

(A) uses natural gas in a residence;

(B) uses natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day;

(C) uses natural gas in any school, hospital, or similar institution; or

(D) uses natural gas in any other use the curtailment of which the Secretary of Energy determines would endanger life, health, or maintenance of physical property.

(Pub. L. 95–621, title IV, § 401, Nov. 9, 1978, 92 Stat. 3394.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3392, 3393 of this title.

§ 3392. Natural gas for essential industrial process and feedstock uses

(a) General rule

The Secretary of Energy shall prescribe and make effective a rule which provides that, notwithstanding any other provision of law (other than subsection (b) of this section) and to the maximum extent practicable, no interstate pipeline may curtail deliveries of natural gas for any essential industrial process or feedstock use, unless such curtailment—

(1) does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c) of this section;

(2) is necessary in order to meet the requirements of high-priority users; or

(3) is necessary in order to meet the requirements for essential agricultural uses of natural gas for which curtailment priority is established under section 3391 of this title.

(b) Curtailment priority applicable only if alternative fuel not available

The provisions of subsection (a) of this section shall apply with respect to any curtailment of deliveries for any essential industrial process or feedstock use only if the Commission determines that use of a fuel (other than natural gas) is not economically practicable and that no fuel is reasonably available as an alternative for such use.

(c) Determination of essential industrial use requirements

The Secretary of Energy shall determine and certify to the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential industrial process and feedstock uses (other than those referred to in section 3391(f)(1)(B) of this title).

(d) Definitions

For purposes of this section—

(1) Essential industrial process or feedstock use

The term "essential industrial process or feedstock use" means any use of natural gas in an industrial process or as a feedstock which the Secretary determines is essential.

(2) High-priority user

The term "high-priority user" has the same meaning as given such term in section 3391 (f)(2) of this title.

(Pub. L. 95–621, title IV, § 402, Nov. 9, 1978, 92 Stat. 3395.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3393 of this title.

§ 3393. Establishment and implementation of priorities

(a) Establishment of priorities

The Secretary of Energy shall prescribe the rules under sections 3391 and 3392 of this title pursuant to his authority under the Department of Energy Organization Act [42 U.S.C 7101 et seq.] to establish and review priorities for curtailments under the Natural Gas Act [15 U.S.C. 717 et seq.].

(b) Implementation of priorities

The Commission shall implement the rules prescribed under sections 3391 and 3392 of this title pursuant to its authority under the Department of Energy Organization Act [42 U.S.C. 7101 et seq.] to establish, review, and enforce curtailments under the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95–621, title IV, § 403, Nov. 9, 1978, 92 Stat. 3396.)

REFERENCES IN TEXT

The Department of Energy Organization Act, referred to in subsecs. (a) and (b), is Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§ 7101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 42 and Tables.

The Natural Gas Act, referred to in subsecs. (a) and (b), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§ 3394. Limitation on revoking or amending certain pre-1969 certificates of public convenience and necessity

(a) General rule

The Commission may not, during the 10-year period beginning on November 9, 1978, revoke or amend any certificate of public convenience and necessity issued before January 1, 1969, under section 7 of the Natural Gas Act [15 U.S.C. 717f] for the transportation of natural gas owned by any electric utility except upon the application of the person to whom such certificate was issued.

(b) Commission curtailment authority

The limitation under subsection (a) of this section shall not affect the authority of the Commission to enforce any curtailment of deliveries of natural gas under the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95-621, title IV, § 404, Nov. 9, 1978, 92 Stat. 3396.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (b), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

SUBCHAPTER V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

§ 3411. General rulemaking authority

(a) In general

Except where expressly provided otherwise, the Commission shall administer this chapter. The Commission, or any other Federal officer or agency in which any function under this chapter is vested or delegated, is authorized to perform any and all acts (including any appropriate enforcement activity), and to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this chapter.

(b) Authority to define terms

Except where otherwise expressly provided, the Commission is authorized to define, by rule, accounting, technical, and trade terms used in this chapter. Any such definition shall be consistent with the definitions set forth in this chapter.

(c) Delegation of certain determinations

The Commission may delegate to any State agency (with the consent of such agency) any of its functions with respect to sections 3315, 3316(b), and 3319(a)(1) and (3) of this title.

(Pub. L. 95-621, title V, § 501, Nov. 9, 1978, 92 Stat. 3396.)

§ 3412. Administrative procedure

(a) Administrative Procedure Act

Subject to subsection (b) of this section, the provisions of subchapter II of chapter 5 of title 5 shall apply to any rule or order issued under this chapter having the applicability and effect of a rule as defined in section 551(4) of title 5; except that sections 554, 556, and 557 of such title 5 shall not apply to any order under such section 3361, 3362, or 3363 of this title.

(b) Opportunity for oral presentations

To the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments shall be afforded with respect to any proposed rule or order described in subsection (a) of this section (other than an order under section 3361, 3362, or 3363 of this title). To the maximum extent practicable, such opportunity shall be afforded before the effective date of such rule or order. Such opportunity shall be afforded no later than 30 days after such date in the case of a waiver of the entire comment period under section 553(d)(3) of title 5, and no later than 45 days after such date in all other cases. A transcript shall be made of any such oral presentation.

(c) Adjustments

The Commission or any other Federal officer or agency authorized to issue rules or orders described in subsection (a) of this section (other than an order under section 3361, 3362, or 3363 of this title) shall, by rule, provide for the making of such adjustments, consistent with the other purposes of this chapter, as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens. Such rule shall establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, exception to, or exemption from, such applicable rules or orders. If any person is aggrieved or adversely affected by the denial of a request for adjustment under the preceding sentence, such person may request a review of such denial by the officer or agency and may obtain judicial review in accordance with section 3416 of this title when such denial becomes final. The officer or agency shall, by rule, establish procedures, including an opportunity for oral presentation of data, views, and arguments, for considering requests for adjustment under this subsection.

(d) Procedures applicable for incremental pricing determinations respecting imports

Notwithstanding the preceding provisions of this section, any determination made under section 3347(c) of this title shall be made in accordance with the procedures applicable to the granting of any authority under the Natural Gas Act [15 U.S.C. 717 et seq.] to import natural gas or liquefied natural gas (as the case may be).

(Pub. L. 95-621, title V, § 502, Nov. 9, 1978, 92 Stat. 3397.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (d), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§ 3413. Determinations for qualifying under certain categories of natural gas

(a) General rule

(1) Determination

If any State or Federal agency makes any final determination which it is authorized to make under subsection (c) of this section for purposes of—

(A) applying the definition of new natural gas under section 3312 (c) of this title;

(B) deciding if certain natural gas produced from the Outer Continental Shelf qualifies under section 3312(d) of this title for the new natural gas ceiling price;

(C) applying the definition of new, onshore production well under section 3313(c) of this title;

(D) applying the definition of high-cost natural gas under section 3317(c) of this title; or

(E) applying the definition of stripper well natural gas under section 3318(b) of this title;

such determination shall be applicable under this chapter for such purposes unless such determination is reversed under the provisions of subsection (b) of this section or unless such State or Federal agency has waived its authority under the provisions of subsection (c) of this section.

(2) Notice to Commission

Any Federal or State agency making a determination under paragraph (1) shall provide timely notice in writing of such determination to the Commission. Such notice shall include such substantiation and be in such a manner as the Commission may, by rule, require.

(b) Commission review

(1) Authority to review and reverse

The Commission shall reverse any final State or Federal agency determination described in subsection (a) of this section if—

(A) it makes a finding that such determination is not supported by substantial evidence in the record upon which such determination was made; and

(B) such preliminary finding and notice thereof under paragraph (3) is made within 45 days after the date on which the Commission received notice of such determination under subsection (a)(2) of this section and the final such finding is made within 120 days after the date of the preliminary finding.

(2) Remand on basis of Commission information

If—

(A) the Commission finds that a State or Federal agency determination is not consistent with information contained in the public records of the Commission, and which is not part of the record upon which such determination was made; and

(B) such preliminary finding and notice thereof under paragraph (3) is made within 45 days after the date on which the Commission received notice of such determination under subsection (a)(2) of this section and the final such finding is made within 120 days after the date of the preliminary finding,

it may remand the matter to such State or Federal agency for consideration of such information. If such agency, after consideration of the information transmitted to it by the Commission, affirms its previous determination, such determination, as so affirmed, shall be subject to review in accordance with this subsection (other than this paragraph).

(3) Notice

The Commission shall provide notice of any proposed finding under this subsection to the State or Federal agency which made such determination and those parties identified in the notice to the Commission of such determination.

(4) Judicial review of Commission actions

(A) Remands

Any party identified in the notice to the Commission of a determination by a State or Federal agency may obtain review of any final decision by the Commission to remand under paragraph (2) in the United States Court of Appeals for any circuit in which such party is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. The reviewing court shall reverse any such decision if it finds such decision is arbitrary or capricious.

(B) Findings

Any person aggrieved or adversely affected by a final finding of the Commission under paragraph (1) may within 60 days thereafter file a petition for review of such finding in the United States Court of Appeals for any circuit in which the party involved in such determination is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. The reviewing court shall reverse any such finding of the Commission if the State or Federal agency determination involved is supported by substantial evidence.

(c) State authority

(1) General rule

A Federal or State agency having regulatory jurisdiction with respect to the production of natural gas is authorized to make determinations referred to in subsection (a) of this section.

(2) Waiver

(A) In general

Any Federal or State agency may, in whole or in part waive its authority to make determinations referred to in subsection (a)(1) of this section by entering into an agreement in accordance with subparagraph (B). If such agency executes such a waiver, the Commission shall, consistent with the agreement, make the determinations which would otherwise be made by such Federal or State agency until the earlier of—

(i) the expiration of the period specified in the agreement; or

(ii) the date such agency transmits to the Commission written notice that it terminates such waiver and assumes the authority to make determinations referred to in subsection (a)(1) of this section.

Any waiver, or termination of any waiver, shall not apply to any determination with respect to any petition therefor which is pending before such agency or the Commission (as the case may be) on the date on which such a waiver or revocation is made.

(B) Agreements

Any waiver under subparagraph (A) may be made only by a written agreement between the Federal or State agency involved and the Commission. Any such agreement shall set forth the terms and conditions applicable to such waiver.

(3) Procedures applicable

Determinations of a Federal or State agency referred to in subsection (a)(1) of this section shall be made in accordance with the procedures generally applicable to such agency for the making of such determinations or comparable determinations under the provisions of Federal or State law, as the case may be, pursuant to which they exercise their regulatory jurisdiction. The Commission may prescribe the form and content of filings with a Federal or State agency in connection with determinations made under this section.

(4) Judicial review

Any such determination referred to in subsection (a)(1) of this section made in accordance with procedures described in paragraph (3) shall not be subject to judicial review under any Federal or State law except as provided under subsection (b) of this section.

(d) Effect of determinations

For purposes of this chapter—

(1) General rule

Any final determination referred to in subsection (a)(1) of this section made by a Federal or State agency (or by the Commission under subsection (c)(2) of this section which relates to any natural gas and which is no longer subject to review by the Commission under this section or to judicial review shall thereafter be binding with respect to such natural gas. The preceding sentence shall not apply to any final determination—

(A) if in making such determination the Commission or such Federal or State agency relied on any untrue statement of a material fact; or

(B) if there was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made, to the Federal or State agency in making such final determination or to the Commission in reviewing such determination.

(2) Application of title 18

Any untrue statement or omission of material fact to a Federal or State agency upon which the Commission relied shall be deemed to be statement or entry under section 1001 of title 18.

(e) Interim collection of maximum lawful price

(1) Collection of section 3319 price

(A) General rule

Effective beginning on the fist day of the first month beginning after November 9, 1978, a seller of natural gas which is produced from a new well may, in accordance with subparagraph (B), charge and collect the appropriate maximum lawful price under section 3319 of this title for any first sale of such natural gas.

(B) Requirements

A seller may charge and make collections under subparagraph (A) only in accordance with the following requirements:

(i) Sworn statement

Before any such collection is made, the seller shall file with the Commission and any Federal or State agency having authority to make determinations referred to in subsection (a)(1) of this section, a written sworn statement that such natural gas is produced from a new well and that such seller believes in good faith that such natural gas is eligible under this chapter to be sold at a price not less than the appropriate maximum lawful price under section 3319 of this title.

(ii) Petition for determination

Within 90 days after November 9, 1978, the seller files a petition to such Federal or State agency for a determination under this section.

(iii) Collection subject to refund

Any such collection made by the seller pending a determination under this section shall be collected subject to a condition of refund, with interest, in the event it is determined by such Federal or State agency that the applicable maximum lawful price is lower than that provided under section 3319 of this title.

(2) Alternate interim collection authority

(A) General rule

Promptly after November 9, 1978, the Commission shall, by rule or order, provide one or more methods under which a seller of natural gas may, in accordance with reqirements established, and for such period as may be prescribed, under such rule or order, charge and collect for any first sale of such natural gas the maximum lawful price under subchapter I of this chapter for which a petition is filed for a determination under this section in any case in which such price exceeds the appropriate maximum lawful price under section 3319 of this title.

(B) Collection subject to refund

Any such collection made by the seller pending a determination under this section, shall be collected subject to a condition of refund, with interest. Such refund with interest shall be paid, in accordance with the rule under subparagraph (A), unless it is de-

termined under this chapter that the applicable maximum lawful price is equal to or greater than that collected. In addition, such seller shall comply with such requirements as the Commission shall prescribe in the applicable rule or order to provide adequate assurance that funds, to the extent attributable to a price in excess of the appropriate maximum lawful price under subchapter I of this chapter are available in the event of such refund.

(3) Collection after initial determination

(A) General rule

Effective beginning on the date of the notice of a determination under subsection (a)(2) of this section, a seller of natural gas covered by such determination may, in accordance with subparagraph (B), charge and collect the appropriate maximum lawful price applicable under such determination.

(B) Requirements

A seller may charge and make collections under subparagraph (A) if such collection is subject to conditions prescribed by the Commission to assure refund, with interest, in the event it is determined under this chapter that the applicable maximum lawful price is lower than that provided under section 3319 of this title.

(Pub. L. 95-621, title V, § 503, Nov. 9, 1978, 92 Stat. 3397.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3312, 3313, 3317, 3318 of this title; title 26 section 613A.

§ 3414. Enforcement

(a) General rule

It shall be unlawful for any person—

(1) to sell natural gas at a first sale price in excess of any applicable maximum lawful price under this chapter; or

(2) to otherwise violate any provision of this chapter or any rule or order under this chapter.

(b) Civil enforcement

(1) In general

Except as provided in paragraphs (2) and (3), whenever it appears to the Commission that any person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of any provision of this chapter, or of any rule or order thereunder, the Commission may bring an action in the District Court of the United States for the District of Columbia or any other appropriate district court of the United States to enjoin such act or practice and to enforce compliance with this chapter, or any rule or order thereunder.

(2) Enforcement of emergency orders

Whenever it appears to the President that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order under section 3362 of this title or any order or supplemental order issued under section 3363 of this title, the President may bring a civil action in any appropriate district court of the United States to enjoin such acts or practices.

(3) Enforcement of incremental pricing

The Secretary, the Commission, or, on the request of the Secretary of Energy or the Commission, the Attorney General, may institute a civil action for injunctive or other equitable relief as may be appropriate to assure compliance with the provisions of section 3345 of this title requiring the passthrough of surcharges paid under section 3344 of this title by any local distribution company with respect to nautral[1] gas delivered to incrementally priced industrial facilities served by such company. Such action may be instituted in any district court of the United States in the State in which such local distribution company conducts business or in the District Court of the United States for the District of Columbia.

(4) Relief available

In any action under paragraph (1), (2), or (3), the court shall, upon a proper showing, issue a temporary restraining order or preliminary or permanent injunction without bond. In any such action, the court may also issue a mandatory injunction commanding any person to comply with any applicable provision of law, rule, or order, or ordering such other legal or equitable relief as the court determines appropriate, including refund or restitution.

(5) Criminal referral

The Commission may transmit such evidence as may be available concerning any acts or practices constituting any possible violations of the Federal antitrust laws to the Attorney General who may institute appropriate criminal proceedings.

(6) Civil penalties

(A) In general

Any person who knowingly violates any provision of this chapter, or any provision of any rule or order under this chapter, shall be subject to—

(i) except as provided in clause (ii) a civil penalty, which the Commission may assess, of not more than $5,000 for any one violation; and

(ii) a civil penalty, which the President may assess, of not more than $25,000, in the case of any violation of an order under section 3362 of this title or an order or supplemental order under section 3363 of this title.

(B) Definition of knowing

For purposes of subparagraph (A) the term "knowing" means the having of—

(i) actual knowledge; or

(ii) the constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

(C) Each day separate violation

For purposes of this paragraph, in the case of a continuing violation, each day of

[1] So in original. Probably should read "natural".

violation shall constitute a separate violation.

(D) Statute of limitations

No person shall be subject to any civil penalty under this paragraph with respect to any violation occurring more than 3 years before the date on which such person is provided notice of the proposed penalty under subparagraph (E). The preceding sentence shall not apply in any case in which an untrue statement of material fact was made to the Commission or a State or Federal agency by, or acquiesced to by, the violator with respect to the acts or omissions constituting such violation, or if there was omitted a material fact necessary in order to make any statement made by, or acquiesced to by, the violator with respect to such acts or omissions not misleading in light of circumstances under such statement was made.

(E) Assessed by Commission

Before assessing any civil penalty under this paragraph, the Commission shall provide to such person notice of the proposed penalty. Following receipt of notice of the proposed penalty by such person, the Commission shall, by order, asssess [1] such penalty.

(F) Judicial review

If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (E), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(c) Criminal penalties

(1) Violations of chapter

Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any provision of this chapter shall be subject to—

(A) a fine of not more than $5,000; or

(B) imprisonment for not more than two years; or

(C) both such fine and such imprisonment.

(2) Violation of rules or orders generally

Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any rule or order under this chapter (other than an order of the Commission assessing a civil penalty under subsection (b)(4)(E) of this section), shall be subject to a fine of not more than $500 for each violation.

(3) Violations of emergency orders

Any person who knowingly and willfully violates an order under section 3362 of this title or an order or supplemental order under section 3363 of this title shall be fined not more than $50,000 for each violation.

(4) Each day separate violation

For purposes of this subsection, each day of violation shall constitute a separate violation.

(5) Definition of knowingly

For purposes of this subsection, the term "knowingly", when used with respect to any act or omission by any person, means such person—

(A) had actual knowledge; or

(B) had constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

(Pub. L. 95-621, title V, § 504, Nov. 9, 1978, 92 Stat. 3401.)

SECTION REFERRED TO IN OTHER SECTIONS

This section if referred to in sections 3345, 3416 of this title.

§ 3415. Intervention

(a) Authority to intervene

(1) Intervention as matter or right

The Secretary of Energy may intervene as a matter of right in any proceeding relating to the proprationing of, or other limitations upon, natural gas production which is conducted by any State agency having regulatory jurisdiction over the production of natural gas.

(2) Enforcement of right to intervene

The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under paragraph (1).

(3) Access to information

As an intervenor in a proceeding described in subsection (a) of this section, the Secretary shall have access to information available to other parties to the proceeding if such information is relevant to the issues to which his participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State agency.

(b) Access to State courts

(1) Review in State courts

The Secretary may obtain review of any determination made in any proceeding described in subsection (a)(1) of this section in the appropriate State court if the Secretary intervened or otherwise participated in the original proceeding or if State law otherwise permits such review.

(2) Participation as amicus curiae

In addition to his authority to obtain review under paragraph (1), the Secretary may also participate an [1] amicus curiae in any judicial review of any proceeding described in subsection (a)(1) of this section.

(Pub. L. 95-621, title V, § 505, Nov. 9, 1978, 92 Stat. 3403.)

[1] So in original. Probably should read "assess".

[1] So in original. Probably should be "as".

§ 3416. Judicial review

(a) Orders

(1) In general

The provisions of this subsection shall apply to judicial review of any order, within the meaning of section 551(6) of title 5 (other than an order assessing a civil penalty under section 3414(b)(4) of this title or any order under section 3362 of this title or any order under section 3363 of this title), issued under this chapter and to any final agency action under this chapter required to be made on the record after an opportunity for an agency hearing.

(2) Rehearing

Any person aggrieved by any order issued by the Commission in a proceeding under this chapter to which such person is a party may apply for a rehearing within 30 days after the issuance of such order. Any application for rehearing shall set forth the specific ground upon which such application is based. Upon the filing of such application, the Commission may grant or deny the requested rehearing or modify the original order without further hearing. Unless the Commission acts upon such application for rehearing within 30 days after it is filed, such application shall be deemed to have been denied. No person may bring an action under this section to obtain judicial review of any order of the Commission unless—

(A) such person shall have made application to the Commission for rehearing under this subsection; and

(B) the Commission shall have finally acted with respect to such application.

For purposes of this section, if the Commission fails to act within 30 days after the filing of such application, such failure to act shall be deemed final agency action with respect to such application.

(3) Authority to modify orders

At any time before the filing of the record of a proceeding in a United States Court of Appeals, pursuant to paragraph (4), the Commission may, after providing notice it determines reasonable and proper, modify or set aside, in whole or in part, any order issued under the provisions of this chapter.

(4) Judicial review

Any person who is a party to a proceeding under this chapter aggrieved by any final order issued by the Commission in such proceeding may obtain review of such order in the United States Court of Appeals for any circuit in which the party to which such order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. Review shall be obtained by filing a written petition, requesting that such order be modified or set aside in whole or in part, in such Court of Appeals within 60 days after the final action of the Commission on the application for rehearing required under paragraph (2). A copy of such petition shall forthwith be transmitted by the clerk of such court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to such order of the Commission shall be considered by the court if such objection was not urged before the Commission in the application for rehearing unless there was reasonable ground for the failure to do so. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court deems proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive. The Commission shall also file with the court its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) Orders remain effective

The filing of an application for rehearing under paragraph (2) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(b) Review of rules and orders

Except as provided in subsections (a) and (c) of this section, judicial review of any rule or order, within the meaning of section 551(4) of title 5, issued under this chapter may be obtained in the United States Court of Appeals for any appropriate circuit pursuant to the provisions of chapter 7 of title 5, except that the second sentence of section 705 thereof shall not apply.

(c) Judicial review of emergency orders

Except with respect to enforcement of orders or subpenas under section 3364(a) of this title, the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended, shall have exclusive original jurisdiction to review all civil cases and controversies under section 3361, 3362 or 3363 of this title, including

any order issued, or other action taken, under such section. The Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 3364(a)(2) of this title; such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days after the entry of judgment by the district court. Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, under section 3361, 3362, or 3363 of this title.

(d) Judicial review of certain incremental pricing determinations

Notwithstanding the preceding provisions of this section, any final determination made under section 3347(c) of this title shall be subject to judicial review in accordance with the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.] applicable to judicial review of any final determination respecting the grant or denial of any authority to import natural gas or liquefied natural gas.

(Pub. L. 95-621, title V, § 506, Nov. 9, 1978, 92 Stat. 3404.)

REFERENCES IN TEXT

Section 211(b) of the Economic Stabilization Act of 1970, as amended referred to in subsec. (c), is section 211(b) of Pub. L. 91-379, title II, Aug. 15, 1970, 84 Stat. 799, set out in a "Cost of Living Stabilization" note under section 1904 of Title 12, Banks and Banking.

The Natural Gas Act, referred to in subsec. (d), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3412 of this title.

§ 3417. Congressional review

(a) Application

This section applies with respect to—

(1) any disapproval by concurrent resolution of a Presidential reimposition of maximum lawful prices under section 3332 of this title;

(2) any congressional reimposition by concurrent resolution of maximum lawful prices under section 3332 of this title; and

(3) any resolution of disapproval relating to incremental pricing under section 3342(c) or 3346(d)(2) of this title.

(b) Determination of calendar days of continuous session

In determining calendar days of continuous session for purposes of provisions of this chapter providing for disapproval under this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-calendar-day period involved.

If both Houses are not in session on the day any submittal subject to disapproval is received by the appropriate officers of each House, for purposes of this section such submittal shall be deemed to have been submitted on the first succeeding day on which both Houses are in session. If both Houses of the Congress do not receive a submittal on the same day, it shall not be considered to be received by either House until the day on which both Houses receive it.

(c) Resolution

For purposes of this section, and sections 3332, 3342, and 3346 of this title—

(1) Concurrent resolution disapproving reimposition of price ceilings

The term "concurrent resolution of disapproval", when used with respect to reimposition of maximum lawful prices under section 3332(c)(1) of this title, means a resolution the matter after the resolving clause of which is as follows: "That the Congress does not approve of the reimposition of maximum lawful prices for first sales of natural gas under section 122(c)(1) of the Natural Gas Policy Act of 1978 pursuant to the transmittal by the President to the Congress on , 19 .", the blank spaces being filled with the appropriate date.

(2) Concurrent resolution effecting reimposition of price ceilings

The term "concurrent resolution", when used with respect to reimposition of maximum lawful prices under section 3332(c)(2) of this title, means a resolution the matter after the resolving clause of which is as follows: That[1] the Congress favors reimposition of maximum lawful prices for first sales of natural gas as provided for under section 122(c)(2) of the Natural Gas Policy Act of 1978 [15 U.S.C. 3332(c)(22)]".

(3) Resolution of disapproval of incremental pricing action

The term "resolution of disapproval", when used with respect to incremental pricing rules, means a resolution the matter after the resolving clause of which is as follows: "That the does not approve the proposed rule under section of the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.] (relating to incremental pricing of natural gas) a copy of which was trasnmitted[2] to the Congress on .", the first blank being filled with the House in which such resolution is introduced, the second blank space being filled with the section under which proposed rule was issued, and the following blank spaces being filled with the appropriate date. For purposes of this paragraph, the term "rule" means any rule or any amendment thereto (other than a technical or clerical amendment).

(d) Expedited procedure

(1) Congressional rulemaking power

This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Rep-

[1] So in original. Probably should be preceded by a quotation mark.

[2] So in original. Probably should be "transmitted".

resentatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) With [1] full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) Referral

A resolution described by paragraph (2) once introduced with respect to any submittal shall immediately be referred to a committee (and all resolutions with respect to the same submittal shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(3) Discharge

(A) In general

If the committee to which a resolution with respect to a submittal has been referred has not reported it at the end of 20 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such submittal which has been referred to the committee.

(B) Motions

A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same submittal) and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) Renewal

If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same submittal.

(4) Floor consideration

(A) Motion to consider

When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate and consideration

Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)[1] Determination on motions

(A) Motions to postpone or to proceed to other business

Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair

Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Subsequent action

Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to a submittal, then it shall not be in order to consider in that House any other resolution with respect to the same such submittal.

(Pub. L. 95–621, title V, § 507, Nov. 9, 1978, 92 Stat. 3406.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (c)(3), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to this chapter (§ 3301 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3342, 3346 of this title.

§ 3418. Applicability of other Federal statutory provisions relating to information-gathering

In order to obtain information for the purpose of carrying out its functions under this chapter, the Commission shall have the same authority as is vested in the Secretary under 7151(a) of title 42 with respect to the exercise of authority under section 796(b) of this title and section 772 (b), (c), and (d) of this title.

(Pub. L. 95–621, title V, § 508(b), Nov. 9, 1978, 92 Stat. 3408.)

[1] So in original. Probably should be "with".

[1] So in original. Subsec. (d) was enacted without a par. (5).

SUBCHAPTER VI—COORDINATION WITH NATURAL GAS ACT; MISCELLANEOUS PROVISIONS

§ 3431. Coordination with the Natural Gas Act

(a) Jurisdiction of the Commission under the Natural Gas Act

(1) Sales

(A) Natural gas not committed or dedicated

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)], effective on the first day of the first month beginning after November 9, 1978, the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.] and the jurisdiction of the Commission under such Act shall not apply to natural gas which was not committed or dedicated to interstate commerce as of November 8, 1978, solely by reason of any first sale of such natural gas.

(B) Committed or dedicated natural gas

Effective beginning on the first day of the first month beginning after November 9, 1978, for purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)], the provisions of such Act [15 U.S.C. 717 et seq.] and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of November 8, 1978, and which is—

(i) high-cost natural gas (as defined in section 3317(c) (1), (2), (3), or (4) of this title);

(ii) new natural gas (as defined in section 3312(c) of this title); or

(iii) natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title).

(C) Authorized sales or assignments

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)], the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.] and the jurisdiction of the Commission under such Act shall not apply by reason of any sale of natural gas—

(i) authorized under section 3362(a) or 3371(b) of this title; or

(ii) pursuant to any assigned authorized under section 3372(a) of this title.

(D) Natural-gas company

For purposes of the Natural Gas Act [15 U.S.C. 717 et seq.], the term "natural-gas company" (as defined in section 2(6) of such Act [15 U.S.C. 717a(6) et seq.]) shall not include any person by reason of, or with respect to, any sale of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission do not apply to such sale solely by reason of subparagraph (A), (B), or (C) of this paragraph.

(E) Alaskan natural gas

Subparagraph (B) (ii) and (iii) shall not apply with respect to natural gas produced from the Prudhoe Bay unit of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976 [15 U.S.C. 719 et. seq.].

(2) Transportation

(A) Jurisdiction of the Commission

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)] the provisions of such Act [15 U.S.C. 717 et seq.] and the jurisdiction of the Commission under such Act shall not apply to any transportation in interstate commerce of natural gas if such transportation is—

(i) pursuant to any order under section 3362(c) or section 3363(b), (c), (d), or (h) of this title; or

(ii) authorized by the Commission under section 3371(a) of this title.

(B) Natural-gas company

For purposes of the Natural Gas Act [15 U.S.C. 717 et seq.], the term "natural-gas company" (as defined in section 2(6) of such Act [15 U.S.C. 717a(6)]) shall not include any person by reason of, or with respect to, any transportation of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission under the Natural Gas Act do not apply to such transportation by reason of subparagraph (A) of this paragraph.

(b) Charges deemed just and reasonable

(1) Sales

(A) First sales

Subject to paragraph (4), for purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if—

(i) such amount does not exceed the applicable maximum lawful price established under subchapter I of this chapter; or

(ii) there is no applicable maximum lawful price solely by reason of the elimination of price controls pursuant to part B of subchapter I of this chapter.

(B) Emergency sales

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid in any sale authorized under section 3362(a) of this title shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established under such section and applicable to such sale.

(C) Sales by intrastate pipelines

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d] any amount paid in any sale authorized by the Commission under section 3371(b) of this title shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established by the Commission and applicable to such sale.

(D) Assignments

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid pursuant to the terms of any contract with respect to that portion of

which the Commission has authorized an assignment authorized under section 3372(a) of this title shall be deemed to be just and reasonable if such amount does not exceed the applicable maximum lawful price established under subchapter I of this chapter.

(E) Affiliated entities limitation

For purposes of paragraph (1), in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid in any first sale shall be deemed to be just and reasonable if, in addition to satisfying the requirements of such paragraph, such amount does not exceed the amount paid in comparable first sales between persons not affiliated with such interstate pipeline.

(2) Other charges

(A) Allocation

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid by any interstate pipeline for transportation, storage, delivery or other services provided pursuant to any order under section 3363(b), (c), or (d) of this title shall be deemed to be just and reasonable if such amount is prescribed by the President under section 3363(h)(1) of this title.

(B) Transportation

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid by any interstate pipeline for any transportation authorized by the Commission under section 3371(a) of this title shall be deemed to be just and reasonable if such amount does not exceed that approved by the Commission under such section.

(c) Guaranteed passthrough

(1) Certificate may not be denied based upon price

The Commission may not deny, or condition the grant of, any certificate under section 7 of the Natural Gas Act [15 U.S.C. 717f] based upon the amount paid in any sale of natural gas, if such amount is deemed to be just and reasonable under subsection (b) of this section.

(2) Recovery of just and reasonable prices paid

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], the Commission may not deny any interstate pipeline recovery of any amount paid with respect to any purchase of natural gas if—

(A) under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act [15 U.S.C. 717c, 717d], and

(B) such recovery is not inconsistent with any requirement of any rule under section 3341 of this title (including any amendment under section 3342 of this title),

except to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

(Pub. L. 95-621, title VI, § 601, Nov. 9, 1978, 92 Stat. 3409.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(A), (B), (C), (D), (2)(A), (B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (a)(1)(E), is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3372, 3375 of this title.

§ 3432. Effect on State laws

(a) Authority to prescribe lower maximum lawful prices

Nothing in this chapter shall affect the authority of any State to establish or enforce any maximum lawful price for the first sale of natural gas produced in such State which does not exceed the applicable maximum lawful price, if any, under subchapter I of this chapter.

(b) Common carriers

No person shall be subject to regulation as a common carrier under any provision of Federal or State law by reason of any transportation—

(1) pursuant to any order under section 3362(c) or section 3363(b), (c), (d), or (i) of this title; or

(2) authorized by the Commission under section 3371(a) of this title.

(Pub. L. 95-621, title VI, § 602, Nov. 9, 1978, 92 Stat. 3411.)